

October 28, 2008



**TRANSCRIPT  
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**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

Councilmember Michael Knapp, President  
Councilmember Phil Andrews  
Councilmember Roger Berliner  
Councilmember Marc Elrich  
Councilmember Valerie Ervin  
Councilmember Nancy Floreen  
Councilmember George Leventhal  
Councilmember Don Praisner  
Councilmember Duchy Trachtenberg



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1 MICHAEL KNAPP: Okay. Good morning everyone. We just had a very illuminating and  
2 enlivened conversation with the county executive this morning. It's always good to have a  
3 good conversation with the executive branch. We will begin our morning in the council  
4 with an invocation. We have joining us, Rabbi Michael Safra, B'nai Israel Congregation of  
5 Rockville. I ask everyone to please rise.

6 RABBI MICHAEL SAFRA: I'm Rabbi Michael Safra from B'nai Israel Congregation in  
7 Rockville. And thank you for inviting me this morning. The great rabbinic sage of the 2nd  
8 Century, Rabbi Elazar ben Shamua, used to recite the following prayer at the end of his  
9 recitation of the liturgy every day. May it be your will, Lord our God, to cause to dwell in  
10 our midst the love and companionship, peace and friendship. May you cause our borders  
11 to be filled with scholars and scholarship and the love of learning. May you fill the totality  
12 of our days with hope, granting us the portion of paradise in the future world, confirming  
13 upon us good friends and good impulses in this world. May we rise early each morning to  
14 direct our hearts to fear your name. And may it please you to grant the satisfaction of our  
15 most worthy desires. As you begin your work for the council this morning, may you find  
16 strength from this prayer. May you be guided by compassion for all God's creatures in  
17 need and may your actions bring you closer to God and to each other. O God, may you  
18 bless all those who sustain the ideals of this county, the values of the state and the  
19 freedoms of the United States of America through their service. May your spirit of council  
20 and wisdom guide us and may the blessing of service make us better able to experience  
21 all of Gods' blessings. May we be guided by the founding principles of our nation and the  
22 founding principles of our faiths. Justice, justice shall you pursue that you may thrive in the  
23 land which the Lord your God gives you in the words of our tradition, [INDISTINCT], may it  
24 be God's will. Amen.

25 MICHAEL KNAPP: Thank you very much. And now for the presentation of proclamation  
26 and recognition of Theresa Baker, teacher at Wheaton Woods Elementary School, by  
27 Councilmember Ervin.

28 VALERIE ERVIN: You would think I would know this by now. Good morning. It's my great  
29 honor and privilege to introduce to you a wonderful woman who teaches at Wheaton  
30 Woods Elementary School. And before I introduce her formally, I want to talk a little bit  
31 about Wheaton Woods Elementary School. It's a Title 1 school and it's impacted by a lot  
32 of poverty. Seventy-two percent of all of its students qualify for free and reduced meals,  
33 and that's eighty-three percent agri-farms, which is a huge number. Eight percent of her  
34 students are special ed students and more than fifty percent are ESL students. So, this is  
35 a very wonderful school with a wonderful mission. And Theresa Baker was just honored.  
36 She received the national award in which we are going to present her with a proclamation  
37 on behalf of the county council. So I'm going to read what this award is all about for  
38 people who are listening. Whereas OfficeMax has partnered with Adapt a Classroom, a  
39 non-profit organization supporting and recognizing extraordinary teachers at Title 1  
40 schools across the nation for their dedication and innovative approach to education and,  
41 whereas, according to a 2005 National Education Association Report, teachers spend



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1 about \$1200 dollars of their own money each year to purchase school supplies, and,  
2 whereas, Theresa Baker, a teacher at Wheaton Woods Elementary School is part of this  
3 year's recipient of \$1000 in school supplies from OfficeMax as part of a national initiative  
4 called A Day Made Better, and, whereas, 2000 teachers where chosen nationwide to  
5 receive a \$1000 award and Ms. Baker was the only teacher in Montgomery county chosen  
6 to receive this award, whereas, Wheaton Woods Elementary School's principal, Judith  
7 Lewis, has said that Theresa Baker was chosen for this award because she embodies the  
8 dedication, the energy and the never-give-up spirit of Wheaton Woods, and, whereas,  
9 Theresa Baker's impressive efforts exemplify how education professionals who are  
10 committed to academic excellence can open the doors of success for the young people of  
11 Montgomery County, whereas Theresa Baker's impressive efforts exemplify how--...

12 Okay, I just read that.

13 THERESA BAKER: You can say it again.

14 VALERIE ERVIN: Now, I'll say it again. Now, therefore, be it resolved that the  
15 Montgomery county council congratulates you, Theresa Baker, on your outstanding  
16 achievement and thanks her for her past, present and future work to light the lamp of  
17 learning from Montgomery county students presented on this 28th day of October in the  
18 year 2008, signed by Council President, Michael Knapp.

19 THERESA BAKER: That's so nice. Thank you.

20 VALERIE ERVIN: Congratulations. So if you'd like to say anything?

21 THERESA BAKER: I would like to say a couple of things. First of all, thank you all very  
22 much. But I'd like to say that in recognizing my hard work, you've recognized the hard  
23 work of all of my students, all of their parents, my great colleagues, my wonderful friends,  
24 my reading coach, Michelle Pace, and my principal, Judith Lewis. So, thank you very  
25 much for noticing how hard we're all working at Wheaton Woods Elementary School.

26 Thank you very much.

27 VALERIE ERVIN: Thank you. It's my pleasure.

28 MICHAEL KNAPP: Wow! We need to see that kind of enthusiasm from everyone that  
29 comes up here today. And if you can't, we'll start over again. If you want, can you stick  
30 around for the day? All right. She's the bar to get over today, guys. Everybody is going to  
31 be enthusiastic as she is. All right, general business, Ms. Lauer.

32 LINDA LAUER: Good morning. We have three additions to the consent calendar all  
33 introductions. One is an amendment to the capital improvements program for the county,  
34 the Department of Transportation, and that's for the state transportation participation  
35 project that will go to public hearing on November 18th at 1:30, a supplemental  
36 appropriation for the Department of Health in Human Services, \$300,000 for the adult  
37 drug court capacity, expansion initiative grant, public hearing and action is planned for  
38 November 18th. And then a special appropriation for the county's Department of Fire and  
39 rescue services, \$1.6 million for the electronic patient care reporting, public hearing in  
40 action November 18th.

41 COUNCIL PRESIDENT MICHAEL KNAPP: Okay.



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1 LINDA LAUER: I have---... We did receive a couple of petitions this week. One is opposing  
2 bill 2508, the Emergency Medical Services Transport fee, one supporting a peace  
3 resolution to end the Iraq war and another supporting suburban hospital campuses  
4 enhancement project.

5 MICHAEL KNAPP: Very good. Thank you very much. Madam Clerk, are there minutes for  
6 approval?

7 CRYSTAL BROCKINGTON: Yes. The minutes of June 9th, October 7th and October 14th  
8 2008.

9 MICHAEL KNAPP: Is there a motion? Moved by Councilmember Ervin. Seconded by  
10 Councilmember Leventhal. Is there a discussion on the minutes? Seeing none, all in  
11 support indicate by raising your hand. That is unanimous. Thank you. We now turn to  
12 Consent Calendar as amended. Is there a motion?

13 NANCY FLOREEN: I move.

14 MICHAEL KNAPP: Moved by Councilmember Floreen. Is there a second?

15 DUCHY TRACHTENBERG: I second the motion.

16 MICHAEL KNAPP: Seconded by Councilmember Trachtenberg. Discussion,  
17 councilmember Floreen.

18 NANCY FLOREEN: Thank you, Mr. President. I just want to draw the council's attention to  
19 item 3B on the agenda, that is, the transportation, infrastructure, energy and environment  
20 committee's recommendation on moving forward on our state transportation program. We  
21 have---... I work very closely with county executive staff and I wanted to express special  
22 thanks to the County Executive and Mr. Holmes and Mr. Gonzales who've helped us  
23 works through a way to program dollars that we've already set aside for transportation  
24 improvements but in a way that will be meaningful to the public. And so, basically, what  
25 this list represents, agenda item 3-B, just funding largely for design and some engineering  
26 work on our top roadway transit and transit projects in Montgomery County. We still stand  
27 ready to and we'll be negotiating with the state on moving these projects forward, their big  
28 ticket items, we can't pay for all of them, but we can get them in a position to move  
29 forward at that magical point in time when there's actually money for the construction.

30 And, so, we're very enthusiastic about the work that we've been able to achieve so far and  
31 we look forward to the council's final endorsement of this after the public hearing.

32 MICHAEL KNAPP: Very good. Thank you. Councilmember Elrich?

33 MARC ELRICH: I just want to say that I'm really happy to see the BRT projects in here. I  
34 was at a council government's meeting I guess a week ago and the conclusion the council  
35 governments' staff has reached is that the only effective way we're going to deal with the  
36 mass transit problems in the DC Region is by basically trying to blanket the DC region with  
37 as much mass rapid transit as possible. It's feasible. It's the least expensive way forward  
38 and it's more easy to implement than more difficult, more capital intensive systems. So I'm  
39 really happy to see the inclusion of these two projects on the list.

40 MICHAEL KNAPP: Very good. Councilmember Berliner?



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1 ROGER BERLINER: Just a brief observation with respect to item A which is an  
2 improvement on our current situation that Councilmember Leventhal has been at the  
3 forefront of our clean energy rewards. And now we are tweaking that a bit to draw off from  
4 the national model as well as making explicit that in the year 2009 we will increase our  
5 consumption of wind power up to 15% and have 20% by the year of 2011. So, this is a  
6 good step forward and I commend the county executive and my colleague for their work  
7 with respect to this.

8 MICHAEL KNAPP: Councilmember Floreen.

9 NANCY FLOREEN: Thank you. I just wanted to comment on Councilmember Elrich's  
10 points of what we have been, I've told is that Metro is not going to be able to advance its  
11 bus rapid transit objectives without a significant infusion of cash. And some of you may  
12 have noticed that the state has already taken back or has declined to expend \$5 million  
13 for our Ride On service. Significant public subsidies are required for our bus service  
14 generally and, so, we are going to have to work towards some funding solutions with our  
15 partners at the state and federal level at the---... over the next coming months. Hopefully,  
16 we will see some progress on this front after next Tuesday but we shall have to wait and  
17 see. And I think the issue of funding the expensive parts of this consolidated program is  
18 going to be a major focus in the next couple of years. Thanks.

19 MICHAEL KNAPP: Thank you. I also wanted to thank the committee and the executive  
20 branch for working on this new transportation package. I think it is a model of probably  
21 things to come. And I think it's important for, we as local government to get as kind of the  
22 first, provider first and last resort to take the lead on that. It is certainly our hope that the  
23 state will come along when they can get there, but I think it's important that we take this  
24 leadership role and I appreciate all of the efforts that people are taking to put this out there  
25 both in the area of transit and in our roadway capacity. And I think that we need to  
26 continue to explore new mechanisms to look at how state funding for transportation  
27 projects is done because--what did you call it? The magical moment?

28 NANCY FLOREEN: That magic moment.

29 MICHAEL KNAPP: The magical moment when funding appears. I'm not sure who's got  
30 that magic wand exactly, but I think we're going to have to come up with some real world  
31 examples of things that we can do differently in order to make sure that transportation  
32 projects get funded again because it's not just even a state issue. Federal governments,  
33 transportation trust fund has enough money to get through, I think, till next February at  
34 which point they've got to figure how they address that issue as well. So the only good  
35 thing out there right now is the fact that gas prices have come back down. So, anyway, so  
36 thank you all very much. And I also appreciate Councilmember Berliner comments on the  
37 county energy policy and everyone's effort to make sure that we move forward on that  
38 area as well. I see no further points on the Consent Calendar, all in support indicate by  
39 raising your hand. That is unanimous. Thank you very much. Councilmember Ervin?

40 VALERIE ERVIN: Yes, councilmember Knapp, I'd like to invoke Rule 5C of the council's  
41 rules of procedures and make a motion to add an item to the agenda to set a public



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1 hearing on the planning board draft amendment to the master plan for historic  
2 preservation, Perpetual Building, association building. I circulated a member to all--... a  
3 memo to all council members on October 23rd, 2008 spelling out the reasons for this  
4 request. And I would like the council to have the opportunity to consider the historic nature  
5 of the property located at 8700 Georgia Avenue. Council staff has prepared a resolution  
6 that will set a public hearing for December 2nd at 7:30 P.M.

7 MARC ELRICH: Second.

8 MICHAEL KNAPP: There is a motion and is second. The motion is the designation of a  
9 public hearing for the Perpetual Building. I want to have Mr. Faden just come forward to  
10 explain to us. We've actually spent--planning, housing and economic development  
11 committees have spent an enormous amount of time over the course of the last couple of  
12 months having discussion on historic designations. And, so, we've been trying to figure  
13 out what comes over, what doesn't come over from the planning board, what is put in the  
14 county's historic master plan and historic atlas. And so what I want to try and do is, since I  
15 think even with the 4th work session we had yesterday we're still finding details of the law  
16 and the requirements of how things work that we don't fully understand in the committee,  
17 and, so, I think it would be helpful to have Mr. Faden is just going to talk about the process  
18 of designation of historic projects and how that happens and then what comes before the  
19 council and what doesn't come before the council. So, Mr. Faden?

20 MICHAEL FADEN: Thank you, Mr. President. I should say, first, as we've said before that  
21 the council can have a hearing on any issues at any time we want to, but I would note in  
22 this context that our view of the law is that there is no vehicle for the council to act on  
23 regarding this particular designation. We read the county law and to some extent the  
24 underlying state law of the Regional District Act as requiring before the council can act on  
25 a historic designation that the Planning Board have approved master plan amendment  
26 because these are all amendments to the master plan for historic preservation so that the  
27 planning board has to put a master plan amendment before the council regarding the  
28 particular property in order for the council to act on it. In this case, the Planning Board  
29 essentially has sent up, I guess they call it a non-recommended amendment, but it is  
30 essentially what we think of legally is an empty envelop. There is no--... UNIDENTIFIED  
31 SPEAKER: [INDISTINCT].

32 MICHAEL FADEN: Well, that's the best we can. That's the analogy we can come with up.  
33 We read, again, the county law and to a degree the regional district act as requiring the  
34 planning board to have acted on a master plan amendment of this type just like any other  
35 master plan. And then before the council acts on it you, of course, can--your role as  
36 oversight role over the planning board--direct them to look or take another look if you will  
37 at any particular property. But if they have not sent up an amendment, we think there is no  
38 action the council can take.

39 MICHAEL KNAPP: So I just wanted to clarify that. So, we can certainly have a public  
40 hearing, but once we conclude the public hearing and there is nothing before the council



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1 to act upon. And, so, I just wanted to ask the maker of the motion, so, all you're seeking  
2 right now is a public hearing?

3 VALERIE ERVIN: Yes.

4 MICHAEL KNAPP: Okay, and recognizing that there isn't anything, once we're through  
5 with the public hearing, there's no next step necessarily. Valerie Ervin: So there's no next  
6 step after the public hearing?

7 MICHAEL KNAPP: As Mr. Faden has just described, we don't have anything before the  
8 council to actually act upon. So we can have the public hearing on this particular item. We  
9 can have a public hearing on anything but then there is nothing to bring back anything.

10 VALERIE ERVIN: Well, I was approached by some folks from the historic preservation  
11 advocates in the county. And this is located in my district and people are very concerned  
12 that this is going to go by the wayside and we're not going to have the opportunity for  
13 people to speak on behalf of the historic nature of this building. And, so, I'm simply asking  
14 that we hear what folks from the community have to say.

15 MICHAEL KNAPP: We have a couple of comments. Councilmember Elrich?

16 MARC ELRICH: I thought that the council had the final word on matters of zoning. And it  
17 seems to me just because park and planning chooses not to recommend something it  
18 can't mean that the council can't take a positive action. I mean they had something in front  
19 of them. They chose not to act. It doesn't seem to me it ties our hands and forces us to not  
20 do anything anymore than if they had sent it forward with a positive recommendation that  
21 obligates the council to validate their positive recommendation. It can't be that, you know,  
22 the only thing we can do is say yes or no to a positive recommendation on their part but  
23 not disagree with them on a negative recommendation.

24 MICHAEL FADEN: It's a bit counterintuitive, but that is exactly how we read the law  
25 governing the master plan process. The planning board's recommendation, actual  
26 approval of a master plan amendment is a condition proceeding to the council acting and  
27 that's our interpretation of the law. It has been since we've looked at this a couple of years  
28 ago in another historic preservation setting.

29 MICHAEL KNAPP: And to that point Marc, I guess... and that I guess what you've said is  
30 you can always direct them to go back and look at something, but there is nothing before  
31 us to act upon currently. Councilmember Leventhal?

32 GEORGE LEVENTHAL: I wish--perhaps I received it but I don't have it in my packet--I  
33 wish I had the benefit of the planning board's analysis of the HPC's recommendation  
34 before Ms. Ervin made her motion. So, I mean, the motion's before us has been made  
35 and seconded but I sure would like to understand better other people's analysis of the  
36 historicity of this building. I think it's important that we preserve structures that have valid  
37 standing as historic structures. On the other hand, we saw just recently that sometimes  
38 the advocates will use historic designation as a route to achieving other land use goals.  
39 And if there is such a memo, I haven't seen it from the planning board, so I don't feel like I  
40 have enough understanding myself with respect to the historicity of this property to know



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1 how to vote on Mr. Ervin's motion which takes us, I think, here at the council somewhat by  
2 surprise. It's not...

3 VALERIE ERVIN: Actually it was in Thursday's packet.

4 MICHAEL KNAPP: Is the memo in the packet?

5 VALERIE ERVIN: The memo is in pocket.

6 MICHAEL KNAPP: So, but I guess to that point--... we're not actually voting a designation  
7 of the property because this piece came over as a part of...

8 GEORGE LEVENTHAL: No, I heard that, but realistically, I mean if we're going to, if we're  
9 going to grant the public hearing, we're making a judgment that there is validity to the  
10 HPC's recommendation. Otherwise, we wouldn't have a public...

11 MICHAEL KNAPP: Except that... but except that we still haven't any motion. There's still  
12 nothing before the council to act upon.

13 GEORGE LEVENTHAL: I heard that.

14 MICHAEL KNAPP: So, I guess that's the point I want to try and get out there because my  
15 only concern with this would be that we build up an expectation that we have a public  
16 hearing that then there's something the council can do after that when in fact there--at  
17 least as I understand our attorney--that there is really no action after that. And so I guess  
18 that's the only point I'm concerned about.

19 MARC ELRICH: Well, Mike, can we take the action of asking if supposed we have the  
20 public hearing and we're persuaded, we could suggest that the planning board reconsider  
21 it but it wouldn't mean we're making a decision but we could say we think there's enough  
22 merit here.

23 GEORGE LEVENTHAL: Okay. I apologize. There was no memo from the planning board  
24 regarding the historicity of the perpetual building in the packet that was delivered to my  
25 home. If it was received in my office, I get a lot of paper in my office. I haven't seen it, so,  
26 my fault, you know, but it didn't come in the packet and I didn't come prepared to make a  
27 judgment on the historicity of this building this morning.

28 MICHAEL KNAPP: Okay. Councilmember Berliner?

29 ROGER BERLINER: I was planning on voting for the motion on the assumption that in  
30 fact there was some action that the council could take as a result of the public hearing. Mr.  
31 Faden, could you respond to the observations of my colleague with respect to--let's  
32 assume hypothetically--that one were to have a public hearing, let's assume hypothetically  
33 that at the end of that public hearing five members of the council felt that the decision of  
34 the planning board was an error and that we wanted--... we had a different view. What  
35 would be the vehicle that would then be--... could be introduced, if any, that would express  
36 the council's desires, will, feelings with respect to this?

37 MICHAEL FADEN: You could communicate to the planning board--and I'm not sure the  
38 exact form that communication would take that you would like them or would--or much to  
39 the point--direct them to take another look at the potential designation of this property.  
40 They then would...

41 ROGER BERLINER: Could or could not.





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1 MICHAEL FADEN: Could or could not. And if they looked at it, they could or could not  
2 designate, recommend designation.

3 MICHAEL KNAPP: Councilmember Leventhal?

4 GEORGE LEVENTHAL: So, in effect, if we were to take it up ourselves, it would be as if  
5 we decided to take up a master plan ourselves. And we have a planning board and to  
6 some extent our ability to take up master plans is triggered by due consideration of the  
7 master plan by the planning board. And if they haven't sent us a master plan, we don't just  
8 decide ourselves as the county council to take up some other sector plan. I mean, you  
9 know, with the White Oak has been under much discussion and we know that there's a  
10 need for a sector plan there but we couldn't, the county council just draw up the sector  
11 plan for White Oak. We can't do it unless the planning board sends it to us. Am I on the  
12 right track here?

13 MICHAEL FADEN: You are exactly correct. In fact, this is a form of master plan and the  
14 rules are the same for any other master plan.

15 MARC ELRICH: Why is it more like a ZTA than a master plan? It seems to me this is more  
16 like, you know, looking at something we don't like on a small spot in doing the ZTA than  
17 asking somebody to do a master plan.

18 MICHAEL FADEN: The master plan process is laid out in Chapter 33 of the County Code  
19 and referred to in a little bit of detail in the Regional District Tact and they both set up a  
20 process in which the planning board is the initial actor and the master plan has to be  
21 "completed" there before it comes to the council for ultimate decision.

22 MICHAEL KNAPP: I would make one observation. I was the fortunate district  
23 representative for the last property we had this type of a discussion and one of the things  
24 that we did was to actually ultimately get the community, the property owner and ultimate  
25 county elements together to identify kind of a path that would preserve the property, the  
26 property in question without necessarily having to go back to the entire designation  
27 process. And actually it was a lengthier process. It took us three or four months to finally  
28 get everybody on the same page, but it was something that we did and it was a successful  
29 outcome. And I would just observe that in a similar situation, we could-... we got to a good  
30 outcome. It just was a different pathway and we'll just make that note for the district  
31 councilmember. Two more comments and I think we have a motion before us.  
32 Councilmember Berliner?

33 ROGER BERLINER: I guess, on reflection, I just want to share with my colleagues, I am  
34 concerned about the precedent this would establish, that every time there is a non-action  
35 by the planning board that we hold a public hearing on an issue in order to advise the  
36 planning board of an alternative point of view. And, so, it is with regret that I will not vote in  
37 favor of the motion.

38 MICHAEL KNAPP: Council member Leventhal?

39 GEORGE LEVENTHAL: So, I do recollect Council member Ervin's memo about this. I was  
40 not aware until just prior to this meeting that it was going to be made as a motion here in  
41 full council, and I have to ask this publicly because there's another issue present in here.



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1 And that is did Council member Ervin approach the Council President and request that  
2 this be placed on the agenda since it is the Council President who compiles the agenda  
3 because there's another issue present. And if the Council President decides that  
4 something's not in order and the Council members are going to add things to the agenda  
5 over when the Council President disinclined to do that, does that happen routinely? I  
6 haven't seen it. I don't recollect it. I've been here six years.

7 MICHAEL KNAPP: It was a conversation. The Council President had the concern that has  
8 been raised by others here. And I consulted with Mr. Faden and it didn't seem to me that  
9 there was anything to bring before the Council given the fact that we didn't have an action.  
10 All we had was a potential for a public hearing, which then lead to an impression that  
11 there could be action where there was no action that we could take. And, so, it didn't make  
12 sense in the Council President's mind to schedule something for a vote that wasn't going  
13 to lead to an ultimate action. And, so, if the Council member from District 5 chose to, you  
14 know... Was it Rule 5C?

15 VALERIE ERVIN: Rule 5 C.

16 GEORGE LEVENTHAL: When was the last time Rule 5C was invoked?

17 MICHAEL FADEN: You all should have a little red rule book in your drawer. Rule 5C says  
18 that, essentially, that on the motion of any Council member, the Council can amend the  
19 agenda.

20 GEORGE LEVENTHAL: Yeah, and when was the last time that happened?

21 MICHAEL FADEN: I don't recall it.

22 GEORGE LEVENTHAL: How long have you been here?

23 MICHAEL FADEN: Almost twenty. I do recall that. Twenty-two years.

24 GEORGE LEVENTHAL: So, in your memory, no council member has tried to add  
25 something to the agenda over the Council over the last twenty-two years?

26 MICHAEL FADEN: No, I think it was... I think that was invoked a couple of times in the  
27 early part of my tenure here.

28 GEORGE LEVENTHAL: Well, you know, this puts me in a very difficult position. I live in  
29 the area where at least one of the vigorous advocates of the project resides as well. And,  
30 you know, one of the-... it has been advocated from time to time that the Council President  
31 be elected by the voters, that the Council President be a four-year position. I've never  
32 been friendly to that idea here in Montgomery County because I think that having served a  
33 term as Council President and having willingly given up the title so others of my  
34 colleagues could have a crack at it. And for those who would like to be Council President  
35 at some point, it's a position of some limited capability to make things happen. And one of  
36 the things that the Council President has is the ability to determine what is in the best  
37 interest of the Council to be placed before the Council on the Council's agenda. And I  
38 suggest that the more we chip away at that ability, you know--it's not about Mike Knapp,  
39 he's only going to be Council President for a few more weeks--anyone of us may be  
40 Council President at some point and if we find we have no ability whatsoever to manage  
41 the council's agenda, it's going to be awfully difficult to make things happen around here.



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1 You know, we do need to have the ability for someone to preside and that includes  
2 determining what goes on the Council's agenda regardless of the fact that a rule exists. It  
3 exists in Robert's rules. Also, you can overturn the ruling of the chair by a two-thirds vote.  
4 It's a super majority, and it happens in very rare circumstances because there's comedy in  
5 collegiality among members of the body and we respect the prerogatives of the presiding  
6 officer unless we don't. But if we don't, there's consequences to that. It makes it difficult to  
7 operate a body if the presiding officer doesn't have any capability to program what comes  
8 before the body. And I suggest that a price may be paid by those who seek to be council  
9 president in the future if we go down this road today. So with great regret and with  
10 appreciation for my neighbors who live right near me who are advocating for the  
11 preservation of this building, I don't think this is a wise precedent and I won't support the  
12 motion.

13 MICHAEL KNAPP: Councilmember Elrich?

14 MARC ELRICH: I don't see the harm in granting the hearing. I mean we have lots of  
15 things to do, but I don't see where any of us would be greatly harmed by sitting through  
16 and listening to the arguments that our residents would make. And I think that one of the  
17 factors and value bringing it forward this way is the timing itself. We don't have a meeting  
18 on the 4th and the 11th, and depending in how you interpret it--and with all due respect, I  
19 mean there are people who don't interpret the law quite the way we've been given the  
20 interpretation of it--there are some people who feel we can act by not being able to act on  
21 the 4th or 11th, we'd have no ability to take any action. You know, that the clock would  
22 expire. And, to me, this just kind of keeps it alive and I think it's worth keeping it alive. I  
23 think it's worth examining the issue that was raised about whether, in fact, we can only  
24 consider a positive recommendation but somehow can't consider a negative  
25 recommendation. That strikes me incredibly odd. But I think it's worth having that door  
26 open and, if nothing else, the ability of the Council, if we really are moved by the  
27 arguments, to say we think this is a mistake. I mean I've been on here for almost two  
28 years now. No one's asked for this extraordinary, you know, act before. I know--I've heard  
29 people mumble about it at times, you know, wishing things were on the agenda but no one  
30 has done it. And I just think that the combination of the timeliness and the expiring clock is  
31 what moves this to be done this way rather than spending a week or two and seeing  
32 whether Mike could be persuaded to do this on the 4th or the 11th. We're not meeting. It  
33 needs to happen now. So, I'd ask my colleagues to please grant this exception and let the  
34 hearing go forward and then we'll deal with it.

35 MICHAEL KNAPP: Final comment and then we'll vote. Councilmember Floreen?

36 NANCY FLOREEN: Thank you. You know, I really think that it's true that we need to make  
37 the opportunity for public comment on important issues easy and accessible, but I also  
38 think that we have to be careful about raising expectations about what our role is in  
39 respect to processes we have created. There are many, many things that this Council has  
40 established and delegated authority to decide at other levels. And they're hard. They're  
41 difficult and they involve established processes and rules that the community is pretty



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1 familiar with. At least, we've done our best to make sure that there was advice and  
2 information out there to help people work through these processes. If we don't respect  
3 those processes, we add another level, which is basically an appellate level on nearly  
4 everything. And I think that we only want to do that when there is really strong, a really  
5 strong and driving policy debate that we feel compelled to address. I don't, I wouldn't rule  
6 it out, but I think we have to be extremely judicious as to when we set ourselves, introduce  
7 ourselves into a process that is functioning more or less in a way that we anticipated and  
8 established when we created that process. So, as I said, I think you got to be really careful  
9 about when you do this and I'm not sure that this is the case.

10 MICHAEL KNAPP: One final question. Councilmember Leventhal?

11 GEORGE LEVENTHAL: Yeah, I apologize for prolonging this, but the point was made  
12 about the public's... the importance of having public input on this question. Was a hearing  
13 held at the planning board on this issue?

14 JEFF ZYONTZ: Yes, the Planning Board is required to hold a public hearing when they  
15 consider amendments to any master plans.

16 GEORGE LEVENTHAL: So there has been an opportunity for community input on this  
17 question?

18 JEFF ZYONTZ: Yes.

19 GEORGE LEVENTHAL: It's not so that no one has gotten the chance to speak to a policy-  
20 making body on this question?

21 JEFF ZYONTZ: To the Planning Board, yes.

22 GEORGE LEVENTHAL: You know, and I just... the last thing I would say is, I mean,  
23 there's all kinds of times where we're asked to weigh in on matters before the planning  
24 board with respect to a site plan approval and, you know, building lot issues and things  
25 that are outside of our purview. At some point, there are things that we weigh in on like  
26 master plans when they're sent to us and we do have the ability to introduce changes to  
27 the law, which is what the Zoning Text Amendment is; but there are other things that are  
28 under the planning board's purview and once you go down that road where--you know,  
29 there's no limit to the kinds of things that we're asked to weigh in on and it becomes  
30 politicized. That's why we have an independent planning board that are not elected  
31 officials. There are certain issues that we look to independent arbiters to determine so that  
32 we're not purely subject to the e-mail campaigns and electoral ramifications of the  
33 decisions we make. Some things are--the way our structure of government is--some  
34 things are before elected officials and other things are before appointed officials.

35 MICHAEL KNAPP: Okay. Seeing no further discussion, we have a motion before us to  
36 establish a public hearing on historic designation for the Perpetual Building in Silver  
37 Spring. Those in support of the motion, indicate by raising your hand. Councilmember  
38 Ervin, Councilmember Elrich, and Councilmember Praisner. Those opposed?  
39 Councilmember Leventhal, Councilmember Trachtenberg, Councilmember Floreen,  
40 Councilmember Berliner, Council Vice-President Phil Andrews and myself. The motion  
41 fails. We now move to appointments to the Board of Appeals. Thank you all very much.



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1 The Council has received 12 applications to the Board of Appeals from persons seeking to  
2 fill the expiring term of Wendell Holloway, for the vacancy created by the resignation of  
3 Karen Hines. Mr. Holloway did not re-apply for a re-appointment. By law, no more than  
4 three members of the Board shall be from the same political party. These positions can be  
5 filled by Democrat, Republican, or a voter who declines to affiliate with the party or is a  
6 member of another party officially recognized by the Board of Elections. We had twelve  
7 candidates apply for two positions. We went through the interview process a few weeks  
8 ago and had some very, very good candidates that have come forward and we're very  
9 appreciative of the fact that we continue to have a wealth of talent in Montgomery County  
10 who are civic-minded and choose to participate in the various processes and activities that  
11 we need for our government to function well. And so we thank everyone that came  
12 forward. I would now turn to any colleagues for any nominations for those individuals for  
13 whom we interviewed. Councilmember Ervin?

14 VALERIE ERVIN: Thank you very much. I would like to take this opportunity to nominate  
15 Walter S. Booth to the Board of Appeals. As a member of the Montgomery County Bar  
16 Association for 25 years and a resident of Silver Spring, Walter Booth has been an active  
17 member of this community. In addition to his law practice, he has served on Mid-County  
18 Citizen's Advisory Board and the Historic Preservation Commission. I believe that his  
19 analytical reasoning and attention to detail will serve the Board of Appeals well. I  
20 encourage my colleagues to support this nomination.

21 MICHAEL KNAPP: And for clarification, do you have--... Which term? We have two terms  
22 left. We have a four-year term and a one-year term.

23 VALERIE ERVIN: For the four-year term.

24 MICHAEL KNAPP: For the four-year term.

25 VALERIE ERVIN: Yeah.

26 MICHAEL KNAPP: Okay, we have the nomination of Walter Booth before the council. Are  
27 there other nominations for the vacant four-year term? I see none. Do we need a second  
28 for that--... a second for the nomination? We just... Okay. Those in support of Walter S.  
29 Booth to fill the open four-year term on the Board of Appeals, please indicate by raising  
30 your hand? That is unanimous. Thank you very much. Is there another nomination?  
31 Councilmember Floreen?

32 NANCY FLOREEN: Thank you. I'm pleased to offer a nomination in the name of Carolyn  
33 Shawaker for the one-year term for the County Board of Appeals. Carolyn has had her  
34 share of community disputes as a mayor and councilmember in one of our smaller  
35 municipalities in Montgomery County. And, equally important, she's had 37 years at Walt  
36 Whitman. In terms of dealing with community issues and certainly the future of our  
37 community, I think, it's very helpful to have someone who has been there and done that at  
38 the very intimate level of resolving neighborhood controversy from her municipal  
39 experience because that does provide one with the unique perspective on problem-  
40 solving and on collaboration between decision-makers. So, I'm pleased to offer Carolyn's  
41 name.



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1 MICHAEL KNAPP: Very good. Thank you. Any other nominations? Seeing none, all in  
2 support of Carolyn Shawaker to fill the one-year term on the Court of Appeals, please  
3 indicate by raising your hand. Councilmember Elrich, Councilmember Trachtenberg,  
4 Councilmember Floreen, Councilmember Leventhal, Councilmember Ervin,  
5 Councilmember Berliner, Councilmember Andrews and myself. And those opposed?  
6 Councilmember Praisner. At this point, the nomination of Carolyn Shawaker is approved. I  
7 want to thank both of my colleagues and the two applicants, Mr. Booth and Ms. Shawaker,  
8 for their willingness to serve and look forward to the activities they have before them.  
9 There are no shortage of interesting cases before the Board of Appeals right now and  
10 some that have been waiting for their appointments so that they can move forward. So,  
11 please extend the Council's congratulations to them and thank you very much. Okay, we  
12 now turn to action on the FY10 WSSC Spending Control Limits. Councilmember Floreen,  
13 chair of the T&E committee.

14 NANCY FLOREEN: Thank you, Mr. President. This is our welcome the acting director and  
15 staff of WSSC to the table. And, basically, this is our annual event to establish a goal for  
16 addressing our water and sewer needs throughout the region. This is our joint effort with  
17 our colleagues in Prince George's County. And you will see from the packet a rather  
18 elaborate analysis, both WSSC's anticipated cost. Of course, the regional... local,  
19 regional and national indicators for revenue are on a downside, so, we're all very anxious  
20 about how we're going to continue to deliver safe drinking water and a clean environment  
21 to our residents through the spending control limit process. We took this up the other day-  
22 ... last week, right? And in a consult with the county executive, we are recommending that  
23 the WSSC aim towards a 9.5% rate increase. We don't take this lightly. We know this is  
24 not a good time for looking at rate increases. The schedule over the past few years is on  
25 page three of Keith's memo on the subject, but we have been forced to face reality. And  
26 even with this proposal, we make virtually no inroads on our overriding obligations to  
27 make predictable improvements to our water and sewer infrastructure. This proposal will  
28 require some cuts throughout the agency--and I will let the agency discuss this. We will  
29 continue to have pretty regular and serious water main breaks. I believe I heard of one  
30 this morning on Prince George's where traffic was snarled and businesses, I think, were  
31 shutdown as a result of failing infrastructure. So, unbelievably, this amount of increase is  
32 not going to solve the problem but we believe that it's a rational response to pressing  
33 needs, keeping in mind our overall rate payer's concerns. I believe that the number of  
34 9.5% would translate into about \$4.87 monthly increase. Is that correct? Yeah. So that's  
35 what we're proposing, that WSSC aim towards. We hope that... we've been having some  
36 leadership meetings with the Prince George's side to work through this. I know they're  
37 sensitive to the problem of the breaks and I know that they're equally sensitive as we are  
38 to the challenge of residential--of resident burden that we're discussing here. So it is some  
39 reluctance, I think, that the committee recommends this number. There was a strong  
40 argument made to go higher than this and I think we felt that we just couldn't. So with that,  
41 let me turn it over to Keith and WSSC for any additional comments.



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1 KEITH LEVCHENKO: Just a couple of points, we did receive from the executive a letter  
2 Friday which was circulated to the council. At the committee work session on Thursday,  
3 the executive staff had mentioned the executive supporting a 9.5% rate increase and  
4 that's reflected in the memo that we received on Friday. So that is consistent with the  
5 committee recommendation. Also, we did... Prince George's County met on Thursday and  
6 staff had recommended in that meeting a 6% rate increase. And WSSC was there. They  
7 can speak to the Prince George's committee reaction to that and also to the issues that  
8 the 9.5% will leave them with as well. So, I'll let them speak as well.

9 NANCY FLOREEN: I believe this still keeps us on the 200-year plan of infrastructure  
10 replacement, right? Something like that.

11 KEITH LEVCHENKO: We're--... There are some marginal increases recommended in a  
12 proposed CIP depending on how WSSC chooses to close its budget gap this year within  
13 the 9.5% increase. We're not sure where the proposed CIP would be effected if it all by  
14 that, but it does at least keep it where it is and perhaps allow some marginal improvement  
15 to it.

16 NANCY FLOREEN: Teresa, you want to add?

17 TERESA DANIEL: Yes, ma'am. Good morning. I'm Teresa Daniel. I'm the General  
18 Manager for WSSC. As you know, we had estimated a 13.9% rate increase to cover the  
19 rising cost of materials and chemicals and to keep the same services budget as we have  
20 for this year. Of course, we understand that the climate and the reasons for the  
21 recommendations, and, so, really, I only want to point out that anything less than 13.9%  
22 could have an impact on customer service. Of course, I will do my utmost to avoid that or  
23 minimize it. And as you mentioned a minute ago--or Keith mentioned--that Prince George  
24 is recommending a 6%. So, again, anything that the... the more we get below the  
25 estimated need that the harder it's going to be, or course, to minimize those impacts on  
26 customer service. PRESIDENT

27 MICHAEL KNAPP: Prince George has approved...

28 KEITH LEVCHENKO: That was a committee recommendation.

29 MICHAEL KNAPP: A recommendation with the council will be 6%.

30 KEITH LEVCHENKO: We're guessing that they'll probably go with the committee. We  
31 don't know. But traditionally Prince George's has positioned itself lower in the process and it  
32 has required the reconciliation by both councils after the fact. Some years we've  
33 reconciled often by meeting in the middle number, but some years we've not reconciled.  
34 And then WSSC does not have formal guidance from both councils and generally chooses  
35 to submit a budget within the range of the two recommendations to the councils.

36 MICHAEL KNAPP: Are there comments or questions? I don't see any. I would just  
37 observe as on down of page two of the packet that I'm looking at what WSSC had before  
38 and general manager Daniel had indicated that a kind of 13.9% was a number we had at  
39 our leadership meeting, a very good discussion with the Prince George's County folks with  
40 our commissioners, Councilmember Floreen. Our T&E chair Floreen and I were there and  
41 kind of we're very clear that double digit increase is, well, probably necessary and are not



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1 politically doable right now given the economic conditions that are out there. So I thank  
2 WSSC for going back and kind of reworking and recognizing the realities of what's there  
3 and coming up with a number that is probably more workable number.

4 NANCY FLOREEN: This isn't their number.

5 MICHAEL KNAPP: No, but we appreciate, I appreciate their willingness to kind of  
6 understand that. I appreciate the committee's efforts to try and get it to a number that we  
7 think can fit. And I would also just recognize that this is guidance for the beginning of the  
8 process.

9 NANCY FLOREEN: Yeah.

10 MICHAEL KNAPP: This is not establishing whatever the rate is. This is just to say, "Here's  
11 what we're all open to try and get to." And, so, given that Prince George's has already kind  
12 of a different number, we can probably rest assured that whatever number is ultimately  
13 achieved is not going to be 90%. It will be some place different, so, just to kind of put that  
14 clarification out there. Councilmember Berliner?

15 ROGER BERLINER: Yes, I just want to share with my colleagues that during our  
16 committee discussion that we did have some conversation with WSSC with respect to the  
17 need to prioritize and that I believe there was some understanding of the need to do all we  
18 can to replace our older pipes that those of us in the down county experience all the time  
19 these breakages and that we're going to need your help in ensuring that that piece of your  
20 work is attended to even in these difficult budget times. I think there was some  
21 understanding with respect to that and I was grateful for it.

22 MICHAEL KNAPP: Okay, I see no further discussion. We have before us the committee  
23 recommendation for the FY10 WSSC Spending Control Limits. All in support of the  
24 committee's recommendation, indicate by raising your hand. That is unanimous. Thank  
25 you very much. Thank you very much. Okay, we're now turning to district council session.  
26 As we do that, our first item is an action to request for an oral argument. I just want to  
27 make note that following that, the council is going to be taking up a review of the TMX  
28 Zone and then moving in to our first master plan, our sector plan in almost three years.  
29 And, so, given the scale of the zoning text amendments that we have in front of us and the  
30 one of our sector plan, it has been requested that we actually do this as a work session  
31 today, which I think makes a lot of sense given the fact that committees spend a great  
32 deal of time going through a lot of pieces. And I think given the notion that the zone has  
33 been proposed is something that is ideally going to be something they could use in other  
34 master plans coming up. So just for those who are playing along on TV or in the audience,  
35 that the trans--... the TMX Zone discussion is going to be a work session, but I don't  
36 expect the council take any votes today. We now turn to action for a request for oral  
37 argument and/or consideration of the hearing examiner's report and recommendation for  
38 application number G-861. Mr. Zyontz.

39 JEFF ZYONTZ: Well, the first action for the council is to decide whether or not it wishes to  
40 grant oral argument. You had three requests: One from the People's Council, one from  
41 Montgomery Civic Federation, and one from Mal Rivkin. The central issue that was of





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1 concern was consistency with the master plan and compatibility. Thank you. It's up to the  
2 council. It's a discretionary act for you to decide whether to grant it or not.

3 MICHAEL KNAPP: And this had previously been remanded by the Council for further  
4 refinement on those points.

5 FRANCOISE CARRIER: Yes.

6 MICHAEL KNAPP: And what is before the Council is the result of further discussion,  
7 renegotiation of...

8 FRANCOISE CARRIER: I'm not sure I'd call it renegotiation.

9 MICHAEL KNAPP: Okay, further discussion with the parties to reach an outcome in those  
10 specific areas.

11 FRANCOISE CARRIER: It's actually a result of changes in the plans. The applicant pulled  
12 the building back another 30 feet off of the capital crescent trail and they sunk it 4 feet  
13 further into the building, which in my estimation brought it into a compatible relationship  
14 with the trail and the homes and achieved sector plan, substantial compliance with the  
15 sector plan.

16 MICHAEL KNAPP: Okay. It's good to know. So this is the result of the remand that we had  
17 earlier this year?

18 FRANCOISE CARRIER: Yes.

19 MICHAEL KNAPP: I have a couple Council comments or questions. Councilmember  
20 Berliner.

21 ROGER BERLINER: Council President, I would like to move the first item which is that we  
22 grant oral arguments so that we don't spend our time on the merits at this point in time. I  
23 think there had been a number of requests with respect to this. It was indicated I believe  
24 that the oral argument should focus on the conformance with the master plan and  
25 compatibility issue. I understand that this matter has been before us previously, was  
26 remanded nonetheless as one who believes that when parties feel like there's an issue to  
27 be raised, I believe oral argument helps us. And, so, I don't believe that this matter has to  
28 be acted on so quickly that we cannot afford the parties opportunity to present their case  
29 before us and then to act on the matter forthwith thereafter. So, that would be...

30 MICHAEL KNAPP: Is there a second to the motion? Seconded by Councilmember Elrich.  
31 Councilmember Floreen.

32 NANCY FLOREEN: Thank you. I just found the language that we used last January when  
33 we remanded this application. I just want to get steps of response. It's on Circle 36 I  
34 guess. I don't know if we have that actual resolution in front of us.

35 FRANCOISE CARRIER: You do. There's a resolution at the beginning of the packet. Oh,  
36 no, the resolution? The remand resolution? No, that's not in here.

37 NANCY FLOREEN: The actual words, because I just want to be clear. Well, I thought we  
38 had focused on the issue of the relationship of the building to the capital crescent trail.  
39 And then there were some issues with respect to a traffic signal and the relationship to the  
40 Bradley Shopping Center.



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1 FRANCOISE CARRIER: Yeah, there was at, the first time around, there was no indication  
2 whether the Bradley Shopping Center would cooperate in installing the traffic signal that  
3 would be necessary to make this proposal work. Between the two sets of hearings  
4 Bradley Shopping Center did submit a letter saying that they would cooperate in the  
5 installation of the traffic signal provided that the applicants in this case pays for the full  
6 cost and provided that they don't lose any parking spaces, and the applicants engineers  
7 testified that they can put in the traffic signal without removing any parking spaces. So that  
8 issue appears to have been resolved.

9 NANCY FLOREEN: And the other issue that we were very clear about--that had been  
10 raised--is the issue of the relationship to the trail.

11 FRANCOISE CARRIER: And that, in my view, that has been resolved by the changes the  
12 applicant made to the building. That is, you know, my view was not shared by the three  
13 parties who requested oral argument.

14 NANCY FLOREEN: Okay. So was that the main point that they want to address in oral  
15 argument?

16 FRANCOISE CARRIER: It's not just the relationship to the trail. It's also really... my sense  
17 from their comments is that their biggest concern is sector plan compliance. And it's really  
18 a policy decision about what substantial compliance means. And this comes to the council  
19 on a regular basis. There are people who feel that substantial compliance means  
20 whenever there's a number in the sector plan, you have to stick to that number. If it's 3  
21 stories or 4 stories or 52 feet or whatever it is, that you've got to stick to that number. And,  
22 you know, I take a slightly different view. I look at the purpose and the intent behind the  
23 sector plan recommendations. I try to figure out what were the essential elements of the  
24 recommendations that the sector plan was making for that property or for that district. I  
25 also look at the age of the sector plan, because there's language in most of the sector  
26 plans that tells us as they age, we should focus less on the details and more on the  
27 broader intent behind them because circumstances do change. In this case, there is a  
28 height issue. The sector plan had a specific height recommendation which is not met here.  
29 You know, that's clear in my report. I don't quarrel with that. I simply find that it's not  
30 necessary to meet that particular height recommendation because of where they have  
31 placed this proposed building. There's also a question of the use. The sector plan said you  
32 can't have this post office and residential on the same site. They won't be compatible.  
33 There was a lot of evidence to the contrary that persuaded me that you can put these two  
34 on the site. The way they're now proposing it, they're proposing it with a construction  
35 scheme that apparently was not envisioned when the sector plan was adopted, which,  
36 really, the preponderance of the evidence indicated would protect the residents from the  
37 noise and activity associated with those.

38 NANCY FLOREEN: Okay, well, I really just want to understand the relationship of the  
39 issues to our remand because I think that when we remanded it we wanted it to be rather  
40 discrete so that everyone could focus on the right things. And is it your view that at least  
41 the request for oral argument are related to the issues on remand?



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1 FRANCOISE CARRIER: Yes, yes.

2 NANCY FLOREEN: Okay. Well, that was, that's my main issue.

3 FRANCOISE CARRIER: I also would think I should point--the council did not consider this,  
4 the merits of this at all previously. There was no discussion of any aspect of it other than  
5 whether to grant the remand. So, I think it's appropriate for the council to consider the  
6 merits of the case as a whole and not just the issues on which oral argument was  
7 requested.

8 NANCY FLOREEN: Okay, that's helpful. Thanks.

9 MICHAEL KNAPP: Thank you. Councilmember Leventhal.

10 GEORGE LEVENTHAL: I just want to clarify it because I did, I will vote for the motion for  
11 oral argument and I did not vote for my colleagues' motion earlier regarding a public  
12 hearing on historic designation. I'm trying hard at all times as I know all my colleagues are  
13 to think through what is our role, what is our purview, what are the constraints on us. And I  
14 have consistently voted for oral arguments. Sometimes I've regretted voting that way  
15 because sometimes the petitioners are under the impression that oral argument is a public  
16 hearing. It is not. The public hearing is held before the hearing examiner. Now I know in  
17 the case of Mr. Rivkin and Mr. Humphrey, they're extremely knowledgeable on these  
18 issues, so I know there seriously won't be any problem with them misunderstanding the  
19 purpose of oral argument. And I note here that Marty Klauber has asked us to grant oral  
20 argument. But I just want to clarify it. I do think there's a difference between voting for a  
21 public hearing on the matter on which our attorney has said there is nothing before the  
22 council. And I didn't vote for that--with some regret--and then voting for oral argument in  
23 this case where it clearly falls to us to decide whether or not to grant oral argument. An  
24 oral argument in fact is not a public hearing. And that's important. I just share that with my  
25 colleagues because there will be times where the constituents ask us for oral argument  
26 and then they're sorry to get it because they're so, you know, like Ms. Carrier has to  
27 remind them again and again and again that's out of order, that's not in the record, you  
28 can't do that, you can't do that. We've had some very frustrating oral arguments here  
29 where the constituents ended up feeling that they've been mistreated by the Council when  
30 our intent in giving them oral argument was to give them what they had asked for. But in  
31 this case I will vote for the motion. I just wanted to put that on the record since I so  
32 recently voted against a public hearing.

33 MICHAEL KNAPP: I'm actually not in support of oral argument. I mean, I think it was the  
34 Council identifying that a remand was addressed and I thought that it had made sense  
35 given what was laid out there and, so, I'm not sure. I would just then go to the merits of  
36 the case itself. But I appreciate the notion of having oral argument. I appreciate the motion  
37 made by the councilmember from the district. And I don't see any further discussion, so  
38 we have before us a motion for oral, to grant oral argument for application number G-8,  
39 application number G-861. UNIDENTIFIED SPEAKER: I'm missing a member. I just don't  
40 know how important that missing member is.

41 MICHAEL KNAPP: Got any allies out there that want to talk?



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1 FRANCOISE CARRIER: Did anyone second?  
2 MICHAEL KNAPP: Yes, Mr. Elrich seconded.  
3 JEFF ZYONTZ: Oh, the one thing I say...  
4 MICHAEL KNAPP: Mr. Elrich seconded it.  
5 JEFF ZYONTZ: A couple of things on logistics. If you grant...  
6 MICHAEL KNAPP: Mr. Zyontz would like to help out the councilmember. ROGER  
7 BERLINER: I think I'm okay. I'm okay.  
8 JEFF ZYONTZ: If you grant oral argument, the clerk suggest November 18th. If you grant  
9 it, you generally put the time limits. It's typically 20 minutes per side with it divided the pro  
10 and the con for the 20 minutes.  
11 MICHAEL KNAPP: Well, and the purpose of oral argument would be to address which  
12 specific issue, Mr. Berliner?  
13 ROGER BERLINER: The issues that were requested, for example, Mr. Humphrey's letter  
14 to us was to whether or not as to the conformance with the master plan and the issue of  
15 compatibility.  
16 FRANCOISE CARRIER: You might want to add also the purpose clause for the PD Zone  
17 because that's wrapped up in the sector plan issue.  
18 MICHAEL KNAPP: Okay, so, oral argument, we have before us a motion for oral  
19 argument to address purpose, the purpose clause...  
20 FRANCOISE CARRIER: The purpose zone, purpose clause for the zone...  
21 MICHAEL KNAPP: For the zone.  
22 FRANCOISE CARRIER: The sector plan and compatibility. UNIDENTIFIED SPEAKER:  
23 Does compatibility include the traffic issue with respect in that?  
24 FRANCOISE CARRIER: It does because traffic impacts are an aspect of compatibility.  
25 MICHAEL KNAPP: Okay. We have before use the motion as described. Those in support  
26 of oral argument, indicate by raising your hand. Councilmember Elrich, Councilmember  
27 Praisner, Councilmember Trachtenberg, Councilmember Floreen, Councilmember  
28 Leventhal, Councilmember Berliner, Council Vice-President Phil Andrews. Those  
29 opposed? Council President. There you go. It looks like the number is on your side today.  
30 Well done. JEFF ZYONTZ: So, 20 minutes 18.  
31 MICHAEL KNAPP: So 20 minutes each side on November 18th to address the issues as  
32 outlined in the motion. Great. Thank you very much. We now turn to work session on  
33 Zoning Text Amendment 08-14, Transit Mixed-use Zone, the establishment, and at to  
34 some degrees, Zoning Text 08-6, I-4 Zone, Transit Station Development Areas because  
35 the two are interrelated. But we're doing the TMX Zone first in this discussion. Quick  
36 change. UNIDENTIFIED SPEAKER: Council President [INDISTINCT].  
37 MICHAEL KNAPP: Sure. Councilmember Berliner.  
38 ROGER BERLINER: I just want to think the Council President for turning this action into a  
39 work session item. This is a significant proposed change in how the county goes about its  
40 business and those of us who aren't on the PHED committee, I believe, can all benefit  
41 from a robust conversation with respect to what is contemplated and some of the issues



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1 that have been raised by the affected parties. So it would simply allow, I think, all of us to  
2 approach this matter with a lot more confidence in a couple of weeks or whenever we...  
3 there isn't, it seem to me, to be a burning need to act quickly. And, from my perspective,  
4 there was a burning desire to be more comfortable with what is proposed. So, I'm glad  
5 that you agreed to act in this manner. I think it serves the council well.

6 MICHAEL KNAPP: I thank you and I appreciate that. And I think given especially the far-  
7 reaching nature of this proposed zone, I think it's important for people to understand that  
8 that's proposed to us by the planning board. The TMX Zone becomes one of the  
9 fundamental building blocks for the next three or four master plans that the council will  
10 likely consider. And so as a result, the planning, housing and economic development  
11 committees spent, I think, three or four work sessions walking through it. I think there are  
12 still questions that we would say merit further conversation. And so I think it's certainly  
13 worthwhile to have a work session. People are comfortable with this and under that it is.  
14 And I think there are still some elements that we could modify and I think given the  
15 committee's consideration, I don't think that necessarily the committee would be adverse  
16 to some of those conversations. With that, just while I walk through some of the couple of  
17 the general provisions, I turn it over to Mr. Zyontz and Ms. Michaelson and the planning  
18 board chair for any comments they may have. Generally, here's the TMX basics. The TMX  
19 Zone would be Euclidean Zone similar to a CBD Zone. It has a standard and optional  
20 method development that must be recommended by a master or sector plan. And so we  
21 walk through kind of what the triggers are from both standard and the optional method.  
22 Euclidean zones are typically applied to sectional map amendments and application of an  
23 individual property where we have to prove a change or a mistake from the last sectional  
24 map amendment. This can only be applied in transit station development areas and these  
25 transit station owners are designated in the master plans or sector plans. The uses  
26 allowed include everything allowed in the CBD Zone and the TMX Zone for those of you  
27 who have committed that to memory, which I'm guessing aren't many here. So, we'll  
28 probably have to walk through some of those pieces. The development must be  
29 consistent with the adopted master plan's recommendations. We have reduced parking  
30 minimums in an effort to try to recognize some of the cost implications for some of the  
31 other things that have been proposed in this, a fee in lieu for amenities and amenity space  
32 allowed, testimony like the ability to spend some of those resources outside of transit  
33 station development areas that generate the funds. And Councilmember Floreen was  
34 actually very supportive of that as well. And then we have grandfather in all approved  
35 plans, testimony to grandfather current development is law by zoning. What I was going to  
36 do is turn to Mr. Zyontz to kind of walk through all of the pieces. But before I do that, I just  
37 want to briefly give the chair of the planning board just an opportunity if you have just a  
38 few remarks as to kind of where you see the TMX Zone fitting in all of these pieces and  
39 going from there.

40 ROYCE HANSON: If I can take just a few minutes, Mr. President, I would like to do that.  
41 You outlined the basic elements of the zone. What this zone is crafted to do is to provide



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1 the means for managing the development of projects in land that are in key transit station  
2 areas. We start with Twinbrook, we go to White Flint and then to Germantown. It is  
3 oriented to transit stations, or future transit stations. And like the central business district  
4 zones, it has a standard or Euclidean base that has a specific density--in this case, a half  
5 in FAR. It has a height limit. It does, however, require site plan review for projects that  
6 come under the standard method. The optional, and just to review of a moment the  
7 concept of this kind of zoning which was invented originally for central business districts, it  
8 is that the standard base provides sufficient densities and uses to permit economic  
9 development on whatever size property a person has essentially. The optional method is  
10 provided to allow those densities and heights to increase if justified by the kinds of public  
11 benefits that the applicant provides. In this case, we're looking for public benefits in the  
12 form of the kind of design that will produce an active walkable, accessible pleasant public  
13 realm and produce high-quality buildings to frame that public realm. In addition, there's  
14 one other important element in this zone which responds to another public benefit that we  
15 have been talking about for at least two years now, which is the termination of buildable  
16 rights in the agricultural reserve on the last TDR that is provided. This was recommended  
17 by The Agricultural Reserve Working Group that made its report early in 2007. This is the  
18 initial effort to include in the zone and to match it with provisions in Chapter 2B, which is  
19 the agricultural preservation law, to implement that recommendation. And, here, we have  
20 recommended that the incremental increase in density above the half FAR up to the  
21 maximum possible density in the zone, a 4 FAR, that 12 1/2% of that increment, whatever  
22 it is, be made, be provided through the acquisition of an easement or easements on  
23 buildable lots or a contribution into the Agricultural Preservation Fund for the purpose of  
24 acquiring those kinds of easements. Now this is a departure from approaches that have  
25 been used for TDRs which considered them a bonus use. Here, we have made it a  
26 required function of moving from the standard to the optional method. The reason for that  
27 difference is--from the Planning Board's perspective--was that it is important in these  
28 transit station areas to ensure that we achieve the density that we're attempting to  
29 achieve. We think that the incremental cost of this requirement is small and, based on the  
30 analyses that our staff has done, they appeared to be workable. There is always concern  
31 and expressions of concern by those affected that this new straw will indeed break the  
32 camel. We do not think so. We think that it is a reasonable increment and, as we get in to  
33 the work session, we can describe to you how we came to the analysis and how much  
34 density one acquires for the purchase of a building lot termination. One of the ideas here  
35 and an important one is that the actual density that would be permitted and the actual  
36 height that would be established, can be established in the master plan. Because when  
37 you link the requirements of a zone and make one of its requirements conformity or  
38 consistency with the master plan you've made that necessary linkage between planning  
39 and zoning that allows the plan to take on a regulatory character. The zone is designed to  
40 be flexible in terms of its design uses, that's why there's a long table of permitted uses that  
41 includes everything that's in the CBD Zones and everything that was in the TMX Zone. In

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1 part because when you move into the project plan and site plan process of the optional  
2 method, you have almost all of the controls that you would have in using a special  
3 exception. The flexibility is needed because as time goes on, and one of the things that  
4 we're expecting to do--assuming that you adopt the Twinbrook Plan and then the other  
5 plans that we have coming to you in the next few months--that we, the board would also  
6 adopt to further, you know, explicate the requirements and the recommendations of the  
7 master plan, a set of designed guidelines that would help applicants understand how they  
8 can arrange the development on their site and any other more specific designed  
9 guidelines that they should seek to follow. Again, these are intended to be guidelines, not  
10 commands. And the reason for that is that over time, as you just heard in the last  
11 discussion that you had with your hearing examiner, it's important to leave enough  
12 flexibility so that improvements on the original idea can be made so that we can determine  
13 whether things are substantially consistent with the master plan and so that we can leave  
14 room for the kind of innovation that we would really like to see and that we're seeing in  
15 some of our neighboring jurisdictions. So there are a few differences that we still would  
16 like to emphasize and those are outlined in the letter that's in the back of your packet.  
17 When we get into that, some of the lines have changed between the initial draft that I was  
18 working from and the final one that you have before you today and I'll point those out as  
19 we go through. But basically, I just wanted to lay out what the concept of the plan is and,  
20 in applying it by Sectional Map Amendment, the master plan will also identify places in  
21 which height should be limited to a particular, well... or density should be lower than the  
22 maximum FAR that's permitted in the zone. So what we have here is one zone that could  
23 be used in a variety of circumstances but in its application is governed by the  
24 recommendations that would be made in the master plan which you would adopt or  
25 approve.

26 MICHAEL KNAPP: Thank you. And I guess I would just observe that given the concept  
27 that the Chair has laid out, I think the goal is, and given a conversation with the council  
28 that is really to try to establish a great degree of flexibility, especially towards--that mixed  
29 use of transit station development, and the challenge is how you get from where we have  
30 been traditionally to where I think the vision of the future is and recognizing the zoning  
31 code that we have, recognizing kind of the master plan process that we have, and I think  
32 this is probably the first step in that pathway. Can we go from where we've been to where  
33 we want to be in once fell swoop? Perhaps, but I think that the committee wrestled with  
34 that quite a bit to try and figure out what other steps. But I think that the committee  
35 recommended or... recognizes that the concepts and the vision that was brought forward  
36 with this ZTA but we kind of go back and forth as to the best way to try to implement that  
37 and get us from where we are to where we need to be. Before I turn it over to Jeff and  
38 Marlene, Councilmember Floreen had a comment and then Council Vice-President  
39 Andrews.

40 NANCY FLOREEN: Thanks. I just wanted to say a couple of things. One of the challenges  
41 with dealing with the zone, of course, is that we've been working through the Twinbrook



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1 master plan and we've got a lot of comments from people working on other master plans  
2 which we are less--if not, not at all familiar. So there continue to be some issues out there  
3 that we're using this zone to address future issues that we're not fully informed about. So  
4 that has been one of the challenges, and I do have something to say when we get to it.  
5 But I think the thing that we're not emphasizing enough in this conversation is that the  
6 whole... really, this is really a sea change as far as I'm concerned in looking at  
7 development because it is basically saying to the public, "If there is going to be a new  
8 development other than what could have been permitted under the old rules, it's only  
9 going to come based on its commitment to preserving the Ag Reserve. And I think that  
10 point needs to be very clear to everyone as we work forward. The standard projects are,  
11 you know, a basic--may or may not be as attractive as the others but the driving issue  
12 here is a Building Lot Termination Program and how that works within this. So I would--I  
13 think people need to keep that in mind somewhat... certainly from the community's  
14 perspective... I've heard questions about, "Well why, you know, why would you permit all  
15 these new people, or all these new jobs or whatever it is that a plan has some potential to  
16 deliver?" And I mean, my response is because that is a way to ensure that the potential  
17 density out in the countryside is not going to occur. And I think that tradeoff is really  
18 important and it is really a sort of chapter 3 or 4 and our land use efforts to preserve the  
19 green space in Montgomery County. So I wanted to say that--I know that the chair  
20 mentioned that, but I don't think... I think it's the leading statement, not one of the subsets  
21 of the conversation. And so I think that's an important commitment by the county and by  
22 this piece of legislation. No doubt there are some words that can be changed and  
23 adjustments that might be made here and there and we have some interested property  
24 owners surely, but at the end of the day, the driving policy issue is really if there is going  
25 to be new stuff. It needs to be hooked to preservation of what is part of Montgomery's  
26 defining value, and that is the Ag Reserve. And it's a nice fact that we have the person  
27 who led the charge on Ag Reserve to chair the commission that is--or bring us to its final  
28 stages on the subject. So I compliment the chair on this and I-- we've had some  
29 tremendous contributions from community members who've come up with the concept in  
30 greater detail and some proposals for addressing it.

31 MICHAEL KNAPP: Excellent.

32 ROYCE HANSON: I'm an illustration of Jurenberg's law which is formulated by a  
33 colleague of mine at the University of Minnesota. It is that in public policy, nothing ever  
34 ends.

35 NANCY FLOREEN: Well, that is soothing.

36 MICHAEL KNAPP: Elrich for the committee and then to other comments. I'm sorry. We're  
37 supposed to do this until 12:15 and there was a hopeful element in the agenda laid out  
38 that perhaps we would conclude at 12:15 on this. I just want to give everybody a  
39 notification that I'm pretty sure that once we got done with the Board of Health this  
40 afternoon, we will come back to this. I just want to give everyone fair notice. Sorry, Mr.  
41 Elrich.





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1 MARC ELRICH: It's okay. I guess I'm not as comfortable with Nancy's characterization of  
2 this.

3 NANCY FLOREEN: Okay.

4 MARC ELRICH: Because, frankly, if you were to look at all the BLTs in the Ag Reserve  
5 and whether to offset them with building in Germantown, White Flint and Twinbrook, and  
6 that's all we were protecting, there wouldn't be a peep in the room from anybody of that  
7 density being brought intently to those areas. I mean, we're allowing far more density than  
8 we're theoretically banning from being put in the Ag Reserve. So I don't think anybody  
9 should make the argument that somehow this is a tradeoff of sparing the Ag Reserve;  
10 we've restrained them with 1200 BLTs, 1600 BLTs on a good day. JEFF ZYONTZ: Total  
11 number of BLTs is probably about 1400.

12 MARC ELRICH: Right. So the argument that we should--that somehow this massive  
13 increase in density around here is somehow going to spare the Ag Reserve, and you're  
14 only talking about taking 900 BLTs out of the Ag Reserve. JEFF ZYONTZ: Maybe 200 or  
15 300.

16 MARC ELRICH: Fine, even less. I just thought, you know, I don't think the pure nexus is  
17 there. Second, the Planning Board nor the Council have taken no steps beyond the Ag  
18 Reserve to say, "If we want smart growth here, we're going to downzone other parts of the  
19 county so that dumb growth doesn't happen there." And I continue to be frustrated by this;  
20 we're going to let things happen around the metros and this is our policy with no decision  
21 to say well obviously places that are dumb to grow. We don't want it there, we're trying to  
22 encourage it here, but no steps to downzone those areas so the density doesn't come  
23 there. So I think--one of my concerns is that we'll get both this and we'll call it smart and all  
24 the dumb stuff is still out there and it will still be dumb when it gets done later on. And I  
25 think that's a problem. I mean, I wish there was more of a nexus between decisions to  
26 focus development here and decisions to focus development away from other areas in the  
27 county and I think that requires some kind of concrete steps. I mean, if you're saying, "You  
28 don't want it out Ednor Road or out the ICC corridor because it's only a transportation  
29 corridor," then zoning ought to reflect decisions to take away density from those areas.  
30 And I think lastly that we've got, remember, we've got an obligation to protect the  
31 communities that are receiving areas for this density. Its not like you're just going to plop  
32 density in White Flint. I mean it has no impact on anybody else. It is not in the White Flint  
33 sector plan. You know, you're taking a bunch of shopping centers and you're going to  
34 increase massive density on those shopping centers, many of which have no housing  
35 right now whatsoever at our low-lying retail and you're going to major density in there, and  
36 you can't ignore the fact that it has impacts on areas that are outside the technical sector  
37 plan that you're looking at. And I think we have to look at all of this. I'm not saying that  
38 there's no merit to try to put more density here, but this is not exactly a step to save the Ag  
39 Reserve, and it's not exactly without problems. I think we need to be really careful about it.  
40 I mean, people with Down county, we hear from them, you know, I don't want--as much as  
41 we want to preserve the Ag Reserve, I don't want to make this an Ag Reserve versus the



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1 Down county issue. I don't want people in the Down county to feel that their communities  
2 are being sacrificed in order to preserve the Ag Reserve. We've got the Zoning Authority  
3 to preserve the Ag Reserve. We've done taken steps in that direction. We don't have to  
4 just sign off in any level of density in order to accomplish that. So I will continue to hope  
5 that we take a balanced and comprehensive look at these issues.

6 ROYCE HANSON: I think as you see the master plans come before you, you will see a  
7 balance among the various objectives that we're seeking to achieve. We're working on,  
8 well, you have the Twinbrook plan before you in which we have balanced the  
9 transportation capacity with the density capacity that are recommended in that plan. I think  
10 as you see the other plans come before you, you will see an effort to balance these  
11 matters particularly over the long-term life of these plans. There are multiple objectives in  
12 any master plan, and the zone is one tool for achieving those objectives. In Twinbrook,  
13 we're attempting to create a place where one does not now exist. In White Flint, we will be  
14 attempting to create a great urban place, and the densities that are required to do that will  
15 be recommended in the plan and the public facilities to serve it, and the method of  
16 achieving them will be recommended in the plan. The same thing can be said for  
17 Germantown. So, in each of these cases, the zoning ordinance is one of the tools to  
18 achieve the density that is required to your other issue of reducing density somewhere  
19 else. I would just remind you that I have probably been responsible in one way or another  
20 for the downzoning of as much land as anybody in the country. So, I've got unending  
21 appreciation for it. I think that it's--a couple of things are important with the plans that are  
22 coming to you, particularly in the 355, 270 corridor. There will be a certain amount of  
23 growth that occurs in Montgomery County from natural increases in the population, from  
24 immigration, from the creation of employment in the county. One of the things that is very  
25 clear, and one of the things which this zone is designed to help us manage, is that  
26 increasing residential development around transit stations and jobs around transit  
27 stations, is far preferable to essentially allowing things to go on as they have in the past in  
28 which lower density growth occurs outside these areas that can be well-served by transit  
29 and by walking. And, consequently, we--if we continue to do otherwise, we increase our  
30 carbon footprint, we increase the problems of air quality, we increase the dangers to the  
31 environment generally. So you need to think about these master plans as achieved and  
32 the zone as one instrument for achieving these broader objectives.

33 MICHAEL KNAPP: Okay. We have just a couple of council questions and then we'll  
34 actually get to the zone itself. Council Vice-President Andrews.

35 PHIL ANDREWS: Thank you. Well, the next two years, the council and especially PHED  
36 committee is going to be chock full of master plans and, you know, we're launching to it  
37 now, just like a two-year clock that this council has now. I mean, until the end of October  
38 of 2010 for, to consider change of master plan and zoning text amendments and the like  
39 so its going to be a very busy time and this is really the first... this is the first master plan  
40 of this council and we're going to be getting to Germantown next, and then we expect to  
41 get to Gaithersburg West next in the fall, and then White Flint in the winter, and after that.



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1 So it's going to be very busy and I haven't come to a judgment yet on the particular to this.  
2 I know the FED committee has worked extremely hard on it and it may have struck the  
3 exact right balance. So, but the question I have is, "How do we keep in mind, and who is  
4 keeping in mind as, you know, the Planning Board, as we go along and look at each of  
5 these individual master plans, how they fit together, because perhaps in isolation, what is  
6 proposed in the master plan is just right. But how--what kind of thinking is going into how  
7 they interact with each other so that the cumulative impact is acceptable in terms of traffic  
8 and other quality or life issues because we've got--and I think it's fortunate that we're  
9 doing them fairly close together and they're up and down the corridor. So we've got  
10 Twinbrook and we've got Germantown and we're coming down to Gaithersburg West and  
11 White Flint. So we've got, you know, a definable corridor and taking them all up in a  
12 couple of years or a little after that, but that's helpful, I think. But I think, you know, that's  
13 an important part of this, is to understand the sum as well as the individual impact of the  
14 master plan and I'd like to have that addressed as we go along in terms of thinking of the  
15 Planning Board and how they relate to each other. We had a good meeting with the  
16 Planning Board last week at the Cabin John Ice Rink and we talked about the schedule,  
17 there was a comment made regarding the Gaithersburg West plan, that the Planning  
18 Board had modeled unrealistic transit use and it's going to be real important that we really  
19 have realistic numbers in these plans about whatever kind of modal use we're looking at  
20 because that's crucial to maintaining public support and credibility for the plans. But I want  
21 to--as we launch into this two-year concentrated look at master plans, I think it's important  
22 to understand how they relate to each other. I think we have a great opportunity to do that  
23 because they're near each other.

24 MARLENE

25 MICHAELSON: Yeah, the PHED committee asked the exact same question and you'll see  
26 when we get to the master plan discussion, they specifically asked the Planning Board,  
27 "How does this vision for Twinbrook relate to the other centers?" And we'll have a  
28 discussion on that. And then they also looked at the issue of the job's housing balance up  
29 and down the corridor, and how did Twinbrook fit in to the expectations for jobs and  
30 housing in different centers. And they did that for Twinbrook, and I think the intent is to do  
31 that every time we get to a new sector plan to look again at the vision and how it relates to  
32 the other centers.

33 ROYCE HANSON: That is correct. And as we began doing these plans, we also took a  
34 look at the entire corridor. And I think that you will see as these plans come before you  
35 that while there are some similarities in the kinds of things that happen there, there's also  
36 some substantial difference in the kind of economic function that each of these centers  
37 perform. The corridor, essentially, is the economic engine of Maryland, not just of  
38 Montgomery County. This is a major change over a generation in what moves the  
39 economy of the state. So the functions that are performed in the corridor are not just  
40 housing and jobs, but they're very often jobs for a particular kind of activity and industry.  
41 So, we're--we are looking at that and we are trying to understand how each of these



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1 centers differs or what kind of special function that it performs. White Flint for instance is  
2 much more multifunctional than Twinbrook for example, which is a much smaller area and  
3 much more highly-specialized than the kinds of economic activities that we can anticipate  
4 there. Germantown, again, has a different kind of function in the corridor.

5 MICHAEL KNAPP: Okay. Thanks.

6 ROGER BERLINER: Thank you, Council President. I will try to be very brief because I am  
7 eager to have questions that I think we can get into once staff goes through the packet  
8 and we can go through them individually, but I did want to make an observation with  
9 respect to the BLT program in particular as well as the conceptual shift that I think we're  
10 making here with respect to the zone. As I've come to appreciate it and I look forward to  
11 staff correcting me if I'm wrong. The big shift is from a zone that had a little more  
12 specificity in it as zone's had to rely more extensively on master plans. So that when my  
13 colleague expressed his concern about what is before us now with respect to increasing  
14 density, the zone allows for more density but that issue will be for us to decide when we  
15 get to the master plan as to what density in fact is permitted. So we are stripping, if you  
16 will, our zoning approach of some of the rigidity that it has had and placing more discretion  
17 in the Planning Board when it comes the master plans and our own action when we get  
18 the master plans. And I think I am comfortable with that shift generally, there's some  
19 questions with respect to height and things of that nature that are making people nervous  
20 and we need to have that conversation. But I think I am more comfortable now than I was  
21 when we first started having these conversations with the conceptual shift that I  
22 understand this involves. With respect to the BLT, my colleagues and I have continued to  
23 struggle with not 'is this an important public policy' because it is clearly an important public  
24 policy, but the nexus between the people who were being asked to bear this particular  
25 cost and that public policy objective. And the chairman, among others, has been quite  
26 eloquent in speaking to how there is a nexus. How that if we want to ensure that there isn't  
27 growth in places where growth would be dumb, that it's okay to allow the density that is  
28 appropriate in our more urbanized area and to have those people make a contribution to  
29 preserving that which is so wonderful about our county. I think the issue is going to be  
30 about the dollars, it's not about the principle, it is about the dollars and the chairman and I  
31 have had a number of conversations as to whether or not that 12 1/2% is written in stone  
32 or whether there can be some modest adjustment with respect to that and I will be making  
33 a proposal to make a modest adjustment on that because I think what's most important is  
34 that we launch this, that we create the precedent because, then, it creates the  
35 precondition for the other things that we have to do in the agricultural community or the  
36 decisions that we have to make that cannot be made in the absence of having some  
37 comfort that there is a BLT process in place, because that's such a driver for all the issues  
38 that we're facing in the Agricultural Reserve. So I am looking forward to talking about  
39 standard method and whether or not the FAR that's allowed under standard method is the  
40 appropriate 0.5 for standard method of going up to 0.4 and those kinds of issues, but



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1 those are the details that I look forward to hearing, having the staff comment on as well.

2 So thank you, Mr. President.

3 MICHAEL KNAPP: Great. Thank you.

4 JEFF ZYONTZ: I guess I'll take it for the zone. It's always good to create the zone first  
5 before you recommend it in the master plan since, otherwise, you're not quite sure what it  
6 is. This is an absolutely new zone, it's got a ton of detail to it and the committee went  
7 through that detail to get the specifications. I'll proceed through the memorandum; if you  
8 have questions as we go along or something, we can answer when we get back. That  
9 would be great, if you let me know. The first is just standard method, given that we've  
10 gone through some of the other basics and the committee spent a lot of time on making  
11 sure that the standard method was in fact, standard, that that it was something knowable  
12 by applicants before they walked in to the door on what would be required. They're still  
13 required to do site plan but they don't have some of the more discretionary acts that are  
14 involved in the optional method. To that end, the committee recommended a single floor  
15 area ratio standard of 0.5. How did that come about? It's sort of a number that fits with  
16 commercial development above which you would need structured parking for sure. It is  
17 something that is the minimum on the CBD zones as the standard which is a 0.5 CBD  
18 zone standard. So it has some other elements that are already in the zoning ordinance.  
19 0.5 is the number they picked, that's just where they are. Sure.

20 MICHAEL KNAPP: More time? Sure. Questions on...

21 ROGER BERLINER: The argument has been made that 0.5 may work for Germantown,  
22 0.5 may work for Twinbrook... but the notion that 0.5 will work for White Flint, people  
23 contest, and they contest them on the basis, Mr. Chairman, that you articulated, which  
24 was making economic use of the property. And people say in White Flint... 0.5, you know,  
25 yeah, we can keep our strip mall at 0.5 but if you want us to make economic use, 0.5 is  
26 unrealistically low and what you're really trying to do is maximize your extractions. And so,  
27 I just think we need to have that candid conversation with respect to that predicate as to  
28 whether 0.5 works across the board or whether or not it ought to be adjusted for what  
29 some argue is the economic realities of White Flint as compared to Germantown.

30 MICHAEL KNAPP: That was a point of discussion at the committee as well. I mean, we  
31 went back and forth on the right number because we wanted to make sure that we--I think  
32 there are two elements that were included in the zone. One was to try to have a high  
33 enough number at the standard method that would allow for the right economic decision.  
34 One thing we were concerned about was that you don't want people--property owners to  
35 say, "You know what, it's not worth it. It going to be too costly for me to go to the optional  
36 method and I don't get enough benefit doing standard method development to understand  
37 and keep what I've got because the goal is to actually have a new vision, that really  
38 recreates our community going forward. And so we had that, and so that was one of the  
39 real big elements we've kind of wrestled with was, where's the right thing to encourage  
40 people to get to the right point. And we ended up kind of going with the 0.5, but I think  
41 there was question, in any of the areas--whether it's White Flint all the way to



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1 Germantown... is that the right number? And so I think that it's important to kind of have  
2 that discussion for the council because how do you make that economic discussion real  
3 and viable because if we don't do it right then we're going to have a lot of what we already  
4 have. And it's going to--we're going to have to wait a long time to have the right incentives  
5 to get to the optional method and we didn't want to sit here for twenty years waiting for  
6 that to kick in.

7 ROYCE HANSON: I think the general proposition is that the higher the density level you  
8 provide in the standard method the less incentive you provide for people to use the  
9 optional method. Now, the advantages of the optional method are a much greater  
10 attention to design, much better opportunity to make sure that the public realm, the public  
11 spaces, the amenities, the other benefits that you're looking for that are associated with  
12 higher density are provided. If the reason we move the way initially in this kind of zoning  
13 from allowing essentially, basically whatever you wanted to do within a zone to one in  
14 which there is a ceiling on standard method development and to go to the greater density,  
15 you really are encouraged to apply for the higher density where you want to establish the  
16 ceiling in the standard method is at the level that essentially permits reasonable use of the  
17 land at low density. My view and I think the Board's view and I know the Board's view is  
18 that you want to have the standard method as low as you can reasonably place it. And,  
19 you want the difference between the standard method and the optional method to be as,  
20 you know, as great as you can reasonably provide it, so that there is real incentive to use  
21 the optional method. The purpose here is not to encourage people to use the standard  
22 method, it is to encourage them to use the optional method.

23 MARLENE

24 MICHAELSON: And I would just add that where you have higher the expectation of higher  
25 density such as in White Flint, it becomes even more crucial that you do optional method  
26 which is providing all of the amenities, protections and additional review. So, rather than  
27 saying areas where you expect greater development, you want a higher standard method,  
28 to me, that is where the gap between standard and optional is all the more crucial to make  
29 sure you get the development you want.

30 ROGER BERLINER: Right. And I get the public policy objectives here and encouraging it.  
31 I am a little troubled by our definition of standard if our definition of standard makes it a  
32 null set. All right. That, I don't necessarily get that in White Flint a point five FAR is an  
33 economical use of the property. Now, if you tell me it is okay, I understand the desire to  
34 have an incentive to go to the optional. I understand that that's a good thing. And then, we  
35 want to encourage people to use the optional method. It should truly be optional and  
36 standard should have some reality to it and I fear that we are making standard a null set  
37 that there really is really no standard that would never, no one would ever use standard.

38 JEFF ZYONTZ: Well, first of all, I think you find that a lot of the development in the county  
39 and particularly in White Flint is below point five today.

40 ROYCE HANSON: Yes.



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1 JEFF ZYONTZ: You would find things very urbanized above point five, you know,  
2 basically, our central businesses were scared to above that. But, certainly we can come  
3 back and show you what those numbers on and you'll find much of that area far below  
4 point five.  
5 ROGER BERLINER: I appreciate that clarification. PRESIDENT  
6 MICHAEL KNAPP: Not just to show a number but to the extent that we could show some  
7 numbers and some graphic illustrations as to what that looks like because I think,  
8 sometimes it's difficult to figure out what that point five of anything-...  
9 JEFF ZYONTZ: Yes. Right.  
10 MICHAEL KNAPP: To show real pictures of kind of, here's here, we all drive by it, we see  
11 it. That's less than point five and here's what obvious, what's greater than that.  
12 ROYCE HANSON: Okay. Most shopping centers are in about point two five or less.  
13 JEFF ZYONTZ: Right. And by point three five, they start to need structured parking, you  
14 know, again, you know, it's five spaces for thousand, some of those uses. It's a lot of  
15 parking spaces and that just drives a lot of--by the way, Councilmember Berliner, one of  
16 the alternatives is multiple zones. And that issue will come up in another area, that was  
17 council's recommendations, not the committee's.  
18 MICHAEL KNAPP: The committee went back and forth another two different times. So, I  
19 mean, I'm sure it will come up with the full council.  
20 ROYCE HANSON: One of things I would say to you just in terms of the history of the  
21 development on this. I think that our staff, when they initially were working on this, we're  
22 talking about the standard of point three after hearing and listening to all kinds of folks  
23 about this and thinking about, not only what was happening in Twinbrook but also White  
24 Flint and West Gaithersburg and Germantown, the Board recommended point five, our  
25 initial recommendation had to do with the range and we ultimately decided of that just  
26 really wasn't workable in the standard method.  
27 MICHAEL KNAPP: One of the example, one of the letters we got in the last 24 hours also  
28 raised as an example of new buildings just right along 270 to take a look at. And, I have to  
29 remember what letter was in. But to the extend, they've been talk--show, not just the point  
30 five or that looks like but also some of the maximum building height pieces as well. I think  
31 that'll be good to show how those pieces and then relate to each other.  
32 ROYCE HANSON: Uh-hmm.  
33 MICHAEL KNAPP: Okay.  
34 JEFF ZYONTZ: Okay. One of the things we talked about is the relationship of the  
35 maximum to Workforce housing and MPDUs. This is a new zone, these are the new  
36 master plans every time they will be--they'll have to be in conformance with those master  
37 plans or the master plans will say, here's the FAR without MPDUs and Workforce housing,  
38 here's the master plan with. So, those densities should be cleared to be near the issues  
39 that we get in the older plans. So, it's just a flat out recommendations that the density you  
40 prescribe can be exceeded by those numbers and they'll be taken account the master  
41 plan.



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1 ROGER BERLINER: So, the zone has no effect on it?

2 JEFF ZYONTZ: The zone does have an effect on it. Again, the zone sets that, the  
3 maximum, but the maximum--it's the calculable number. It would be point five plus if you  
4 took all of the bonus of MPDUs and Workforce housing and you were all residential, you  
5 know, it would be thirty-two percent above point five. But that would be the number that's  
6 plugged in to all of the analysis at the master plan level as well. So, it's not like it's ever  
7 going to be in excess of the master plan level, this is what the zone is.

8 ROYCE HANSON: The other thing, the other feature of this one that you should be aware  
9 of is that, it does not use dwelling units. It uses FAR as you'll see in the housing  
10 department, I had also recommended that we go to FAR, this allows for much better  
11 flexibility in the building of variety of units, types in the building and it's basically easier to  
12 work with I think both in terms of the amount of units that you're ultimately able to get and  
13 the variation in those units than if we use the dwelling unit.

14 JEFF ZYONTZ: There was a built in assumption in the CBD zones that dwelling units  
15 were a thousand units per unit. And if you exceed that, if you have a unit at that is average  
16 2,000 units, 2,000 square foot per unit, you can double the FAR because you don't count  
17 FAR, you only count units. So, this completely by steps that problem by just having an  
18 FAR and not the dwelling unit. Standard method should not be required other public  
19 facilities other than streetscaping in front of the building. The Planning Board had  
20 proposed that standard method would've been subject to their design guidelines with in  
21 unknown amount of public amenities Again, the committee thought that there should be  
22 standardization of what was standard. So, it's okay, public facilities to the extent of  
23 streetscaping in front of the site to the extent that it's needed, you know if you just read it,  
24 the street escaping on. But that's it, so it's a known quantity. But, again, standard method  
25 is subject to site plan. So, you can tackle all the compatibility issues and do what you  
26 need to bear to make it fit in with the project. Maximum height the Committee  
27 recommended forty-two feet, that's consistent with sort of the standard height limit of C2  
28 zoning, the planning Board I had recommended through twenty-eight feet at one point and  
29 then it came back I think we were okay.

30 ROYCE HANSON: Yeah, we were in accord with forty-two.

31 ROGER BERLINER: And this is just for standard method.

32 JEFF ZYONTZ: This is just standard method. I'll let you know when I move.

33 ROGER BERLINER: Okay.

34 JEFF ZYONTZ: I talked about the design guidelines for two seconds with standard  
35 method. The design guidelines are something that's adopted by the planning Board. The  
36 committee did not want to see it as a regulation adopted by the council. So, just so, you  
37 know, as that comes up with optional method. All right. Now, moving to optional method  
38 and there's a lot of moving parts here, many of which were described in the beginning  
39 steps. It has a maximum FAR of four plus MPDUs and Workforce housing and  
40 consistency with the sector plan. How the planning Board envisions this is that you will  
41 have direct limits in the master plan you adopt that says FAR 2, for example, in a place





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1 like, let's say Twinbrook and some place is having a maximum of one point five FAR. So,  
2 it's conformity with the master plan that makes--with the master plan recommendations  
3 that sort of bootstraps a planning document into a regulatory document. And, that is why  
4 you have an FAR four here whereas when you really get to Twinbrook, the maximum  
5 densities are two FAR. There are also criteria that the committee recommended in the  
6 plan then I've listed them on page six of my memo. And generally, again, it's--and they  
7 really deal with both height and FAR and I'll describe height for a second. The committee  
8 did not recommend a maximum height in the zone as a standard. They recommended a  
9 series of criteria that would indicate how you deal with height. But they didn't have a  
10 numeric height limit as we have in other zones. Now, in some floating zones that have  
11 development plans there is no maximum height. So, to some extent, this is like those  
12 floating zones. It is different than other central business district zones where we do have  
13 maximum heights in optional method projects. But, given that, the criteria start on page six  
14 and basically...

15 ROGER BERLINER: Can I stop you there, Jeff...?

16 JEFF ZYONTZ: Yeah.

17 ROGER BERLINER: ...just for on that particular point? To understand more why if we  
18 thought like there could be height limits in our central business districts our urban centers.  
19 Why we felt we couldn't do that or shouldn't do that for our transit areas which I perceived  
20 to be our new urban environment?

21 ROYCE HANSON: Years ago, I was an expert witness in the federal case in which I was  
22 explaining something in the Chief Judge after a time said to me why the reasons for this  
23 are historical rather than logical, aren't they? The reasons that we have height limits in the  
24 CBD zones is because we were really making--this is really a minor departure compared  
25 of what the CBD zones were to the kind of zoning that we had before which was standard  
26 Euclidean zone which everything was very fixed. We use height limits in those zones  
27 because we had to use height limits in those zones to get them adopted, to be blunt about  
28 it. I think we have seen and you use overlay zone since in some cases to raise the height  
29 limits. That might be allowed or to reduce the height limits. That might be allowed in the  
30 stand--in the optional method of the CBD zones. I think we're at a point now where fixing a  
31 particular site limit particularly when you're dealing with FAR as your governing density  
32 requirement is not the best way to approach the problem of heights. To one extent, FAR,  
33 will govern the kind of height that is possible to achieve the smaller of the tract even with a  
34 lot of FAR the height would be relevantly low. Let's say, you've got a one acre tract that's  
35 designated in the master plan four FAR. If you put all of your density on a fourth of that  
36 tract you could go at the most sixteen stories on that particular parcel. Now, if on the  
37 other hand you've got ten acres of land that zoned four FAR and you would've  
38 concentrated all on a small part, you could very high. But, you need to have the ability as  
39 people come in and the tracts that we're dealing with in these areas very, from the  
40 minimum that you would have for optional method which is less than half an acre up to  
41 maybe twenty-five or thirty acres. So, trying to establish in the zone a height that can work



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1 with every one of those tracts is extraordinarily difficult. But what you can do is in the plan,  
2 say it in that particular area, the heights should be; let's say it's adjacent to a residential  
3 community, no higher than the houses that they confront. You might say fifty feet or sixty  
4 feet, you know, whatever you think is appropriate in that area whereas over the transit  
5 station, you may want substantial heights, you may want 200 or as high as possibly as  
6 300 feet depending on the topography on the site, you know, where it sits, is it a  
7 promontory, is it low lying, what's its relationship to the transit station and to the residential  
8 neighborhoods that surround this area. So, from a design perspective, we thought it was  
9 better to deal with the heights as we deal with the master plans and to provide design  
10 guidelines that help people think about how to mass the buildings on their property, so  
11 that you provide good street frontage and you also deal with a whole lot of other areas  
12 such as how shadows fall on adjacent buildings and things of that nature.

13 JEFF ZYONTZ: And where we've had the problems in the past is heights in the master  
14 plan themselves because they are extraordinarily difficult to change. And that's why I think  
15 part of this is in this criteria a little bit and part of it is in what will be the design guidelines  
16 as opposed to the master plan. But there's another view of this and that's, with this a land  
17 owner or the community expect when we put this zoning off. And it's getting to--there is a  
18 point at which you have no idea what you can do with this zone. And again, one of the  
19 ways to do that was criteria, staff had recommended multiple zones where you can say in  
20 this area, you can have this height in this area that height if you want to do that. In  
21 defense of the planning Board, the problem really is that you go from the five thousand  
22 square foot parcel to the thirty acre parcel that needs roads. So, what happens when you  
23 have dedicated roads, you get the density off the street on top of the building and then,  
24 you might want some significant open space to that. So, it gets very high, very quickly  
25 when you start piling density on top of each other. What looks like--what we say is FAR is  
26 applied to the gross tract area. So, the more dedication you have the higher it goes. So, I  
27 understand that some things that may fit in Twinbrook don't fit in Twinbrook, but the  
28 compromise made by the committee was doing criteria, not maximums in the zone.

29 ROYCE HANSON: Based on the questions that I want to address those criteria too  
30 because we've...

31 GEORGE LEVENTHAL: I don't want to interrupt the flow here because I'm following along  
32 or following the packet but I think all of us are trying to understand visually what we're  
33 talking about. Does anyone know the height? Does anyone the FAR of the nuclear  
34 regulatory commission building which I think it's the biggest building in White Flint as all  
35 those other condo buildings that are almost just high?

36 JOHN CARTER: Approximately 250 and the FAR is 3 I believe.

37 GEORGE LEVENTHAL: FAR of 3.

38 JOHN CARTER: Yeah.

39 GEORGE LEVENTHAL: Okay.

40 ROYCE HANSON: I think it's 285-...



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1 JOHN CARTER: It might be 250 or 285. It's in that range. What's that? I'm not sure. We  
2 can get that for you in specifics.

3 GEORGE LEVENTHAL: So, now 22.

4 ROGER BERLINER: We talked about sixteen stories before-...

5 MICHAEL KNAPP: I know it's always that you visualize-...

6 ROGER BERLINER: Yes.

7 GEORGE LEVENTHAL: You got the stories, you got FAR, you got the height.

8 MICHAEL KNAPP: And that was one of the challenges that committee had is how to just  
9 pick a number for the sake of picking a number. So, if you're looking at in the context as  
10 we were kind of, guidelines to the Planning Board to do that and get broader guidance's to  
11 kind of a tenting effect or things like that as it was picking a number.

12 GEORGE LEVENTHAL: Okay. So, now, I know we're going to get to this. If you want to  
13 get to it later it's fine, but on my mind is I'm listening to this clearly whoever is the land  
14 owner, someone here knows who that is the for Nuclear Regulatory Commission but I,  
15 maybe I should know but I don't.

16 ROYCE HANSON: Government of U.S.A.

17 GEORGE LEVENTHAL: They own the site? Okay. Well, maybe they're not even subject,  
18 maybe we can tell them what to do. But, in any event if you had a comparable, you know,  
19 building that was that tall and all around it there are always condos that are very tall, so  
20 they got this FAR way above point five prior. And the question is now, are we--if we go  
21 with this standard method point five optional method four with lots and lots of  
22 requirements and extractions then is that are we taking away something that the land  
23 owners already have. They're complaining that we are, they're asserting that we are and  
24 the planning Board obviously dealt with that and that's the threshold question here. What  
25 are we taking away and what do they have to give up and return. They're not guaranteed  
26 approval of a building they still have to go to site plan...

27 ROYCE HANSON: That's correct.

28 GEORGE LEVENTHAL: So, even though we're taking away density that the one  
29 representation I had and I think there are several different zones under consideration all  
30 the different sector plans. But, for C2 zoning, the fact that C2 zoning allows a maximum of  
31 X doesn't mean they're going to be granted approval for all of that. So, at whatever point,  
32 if you want to get to now or you want to get to it later, there is a fairness question which is  
33 being raised with us, which is by going to this point five standard, four FAR optional but to  
34 get the four, you got to pay into the BLTs, is it fair, are we taking away something that they  
35 already have and what, is that fair.

36 JEFF ZYONTZ: Well, to address that there was a grandfathering provision that said if you  
37 have an approved development plan or approved project plan or approved preliminary  
38 plan, you are grandfathered. So, you could proceed under your approvals that you already  
39 obtained. If you have not filed one of those, then you're subject to the new zone.

40 ROYCE HANSON: And just go to the fairness issue, there are advantages to the standard  
41 method that are not available under some of the existing zones. For instance, some of the



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1 existing zones have far more limited users, then is permitted under the standard method  
2 here. For instance, in the commercial zones housing would not be allowed and under the  
3 standard method, you could develop housing. So, that there are a number of--there is a  
4 much more extensive list of uses that are permitted in the zone, in fact, all the uses that  
5 are permitted in the optional method are also permitted in the standard method.

6 GEORGE LEVENTHAL: So, they get something in return...

7 ROYCE HANSON: There are tradeoffs...

8 GEORGE LEVENTHAL: Uh-huh.

9 ROYCE HANSON: ...in this. They may not get the--under the standard method, the height  
10 that they might have gotten under C2 if they had enough land or they might not get  
11 something else that's available in C2 but in return, they get something else if they want to  
12 develop under standard method. Also, under C2, there is a limit in terms of the amount of  
13 FAR that is available within that zone that they can use.

14 GEORGE LEVENTHAL: What is that?

15 JOHN CARTER: One and a half.

16 ROYCE HANSON: One and a half.

17 GEORGE LEVENTHAL: Okay. So, that to go from one and a half to four.

18 ROYCE HANSON: Depending on the location, right. Uh-hmm.

19 GEORGE LEVENTHAL: Thanks.

20 MARC ELRICH: The question about the Nuclear Regulatory Building, if it's 280 within FAR  
21 of 3, was 280 necessary to achieve the FAR of 3 or was that just the design the way their  
22 building was designed. Because the implications would be that if we allow FAR of four at  
23 the same we have to be like 300 in 80 feet rather than 280 feet.

24 JOHN CARTER: No, you didn't need to 280 to get the 3 FAR, certainly. The 3 FAR is  
25 three stories covering the whole site. That was the design...

26 MARC ELRICH: You can't go over the whole site, so.

27 JOHN CARTER: Well, yeah. But, the requirements are only 20%. So even if you take the  
28 20% off, the 3 FAR... it becomes four or five levels. You could do it that way. In this case,  
29 they have floor plates that they like of a certain size. This was a federal agency that had  
30 their own programmatic requirements. Part of that, there is some antenna work on the top  
31 that--so there were programmatic aspects that go up.

32 MARC ELRICH: I guess in falling on with George Leventhal... being able to see things. I  
33 think it would be helpful to see what could be built at FAR 4 using, you know--when we  
34 have discussions about floor plates, developers tell us that a standard floor plate is for an  
35 office or for residential or corridors are. So if we could see what is possible, it'd be nice to  
36 know whether a height limit would be feasible and still allow people to develop up to the  
37 FAR with some flexibility and design other than building chunky blocks or whether in fact  
38 this is an invitation to 400-foot heights along the pipe which...

39 ROYCE HANSON: Well, I think the things that we're looking at... remember within FAR.  
40 One FAR is--an acre land is an acre of floor space. And it'd be one floor covering the  
41 whole acre. If you want to build that on half the acre, you still got one FAR but you go up



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1 two stories or quarter of an acre, you go up four stories, so sixteenth of an acre, you go up  
2 sixteen stories. And the question at the master plan level is in this particular area, is there  
3 a limit that you want to place on how high buildings should be in this area. As a general  
4 rule, and that's stated in the criteria here, the closer you are to the transit station--as a  
5 general rule, the higher you may want to allow and the greater the FAR you might want to  
6 allow, the closer you are to a residential community at the periphery, the lower the height  
7 limit that you would recommend.

8 MARC ELRICH: Could you square those things with me because when you talked about  
9 closer to the metro, I keep thinking about what I thought was a goal of walkable  
10 presentation along the street.

11 ROYCE HANSON: Right.

12 MARC ELRICH: So if I can achieve the FAR at 200 feet and it's more likely to bring  
13 buildings out to the street and get me a street face of retail, whatever else we allow along  
14 the first floor; isn't that preferable to 400-foot spindles and all each one hold back to this  
15 1/16th of...

16 MICHAEL KNAPP: It blocks his microphone.

17 MARLENE

18 MICHAELSON: I think that was exactly the argument that staff made was without a height  
19 limit, you have the possibility of having very tall towers that are not approximate to the  
20 buildings next to them. So you don't want tall towers with canyons in Twinbrook; the  
21 committee dealt with that by trying to add some language into the master plan. I think our  
22 recommendation was that we felt more comfortable having some limits like that in the  
23 zone as well.

24 MARC ELRICH: I lean toward heights. My fear is that you could reproduce Rock Spring,  
25 only the tall Rock Spring and you'd wind up with all this land and no walkable frontage and  
26 then people aren't going to want to walk there at night or any other time of the day and  
27 you would lose this opportunity for activating the street and that would be a big mistake  
28 just to have those buildings.

29 ROYCE HANSON: Well, just remember that development in Montgomery County is not a  
30 laissez faire business. That might even be an understatement, but the--you have, first of  
31 all, the master plan and you have to have consistency with the master plan when you  
32 develop under the optional method. One of the first things--one of the requirements of any  
33 development under the optional method is that the applicant must provide a detailed  
34 statement showing how this development helps achieve the objectives, goals of the  
35 master plan for this particular area. You have a detailed and very transparent  
36 development review process which, unlike most jurisdictions around the country, involves  
37 public hearing and extensive review of the project to make sure that it complies with the  
38 recommendations that are made in the master plan. So, in addition to that, what we're  
39 suggesting is that, so you've got an area in which let's say, 3 FAR is recommended by the  
40 master plan. Even if the master plan had no height limit--and we're suggesting that height  
41 limits are appropriate in the master plan--even if it had no height limit, we would have



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1 design guidelines that would say some in the master plan that are laid out as kind of  
2 general design principles either for the whole area or for a specific sub-area that says  
3 buildings should confront the street, that the sidewalks should be provided in such a way,  
4 block should be of such length that they facilitate pedestrian movement, that the first story  
5 should contain retail activity, that there should be a podium confronting the street that's no  
6 more than four stories high and that any tower should be set back by, you know, so much  
7 distance before you go higher. So there are multiple ways to manage what is produced  
8 and the combination that we're talking about here of master plan principles of design  
9 guidelines developed by the Board that provide more form-based guidance to people and  
10 the zone provides a good way of managing that growth so you don't end up with a tower in  
11 a field and no street activity in front of it.

12 MARC ELRICH: That were the case; is that one of the models you could show us that it  
13 would have four stories along the street and there would be this setback which all you  
14 think is reasonable and, therefore, whatever is left in the way of the tower is not going to  
15 be more than 'x' because there's a need to be more--I mean, I think as desirable as it is to  
16 have flexibility, I mean, there are lots of times when that flexibility becomes an argument  
17 that we didn't specify anything, I can do what I want... and I would like to narrow down the  
18 debate over what you can or cannot do, so that there's certainty for everybody. And I think  
19 what you're outlining makes sense and I can see the tower shrinking if I have to come out  
20 to the street.

21 ROYCE HANSON: Right.

22 MARC ELRICH: But I think it would be useful to see how these things would play out.

23 ROYCE HANSON: I think we can show you some illustrations of how that works in this  
24 sort of three-step process you've got. Again, recognize that we're moving from a transition  
25 to the sort of things that Francoise and Jeff were talking about earlier this morning in  
26 which people have expected that if it says 63 1/2 ft in the master plan, that going 63 3/4 ft  
27 is a violation of the plan is not where we should be. We're talking about the substantial  
28 consistency with the plan and I think that is what makes sense in relationship to zone. And  
29 in many cases, I think what we find is if you've got a height limit, if it's reasonable for the  
30 area, many buildings will come in, probably most buildings would come in no higher than  
31 that and some substantially lower because it makes sense in terms of the design of the  
32 whole project that people are looking at. Again, we're talking here also about mixed use  
33 projects to considerable extent where no doubt we'll have some that are all residential with  
34 ground floor retail activity. We will have some that are all non-residential; but again, trying  
35 to get that mixture is an important element and you need different heights for different  
36 kinds of buildings.

37 JEFF ZYONTZ: In the committee report, there were other criteria that went to having a  
38 podium meet the street more and having a setback there and the Planning Board decided  
39 they didn't like that. I mean, certainly you could add that back as a criteria if you thought  
40 that that's important to the zone. One of the things we need to achieve in the zone is to  
41 make sure that it complies with state law that calls for some things for uniformity.



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1 ROYCE HANSON: And we think this--the uniformity requirement here is met.

2 MARC ELRICH: Can I make one more point?

3 MICHAEL KNAPP: One more point. And then we have two more comments before we  
4 break for lunch.

5 MARC ELRICH: I appreciate your segway to the earlier discussion; however, I will say that  
6 when you're talking about redeveloping a parcel adjacent to a strip mall and we're talking  
7 about in a lot if these cases redoing strip malls. I get that there's an argument to be made  
8 for some flexibility. But on the other end of it, where you're confronting the existing  
9 residential neighborhoods where there are expectations, I don't take such a loose  
10 interpretation of that. I mean, it seems to me that well, at one end you've got a fixed stable  
11 community that has expectations and this had expectations, we need to be more  
12 respectful of those expectations and when we do things internally or where we anticipate  
13 everything changes, then it seems to me the argument for the flexibility , more or less  
14 whether it's 48 feet or 52 feet becomes a lot less important. So, that's certainly...

15 ROYCE HANSON: I agree with you. And I think that's something that in the master plan  
16 you can make abundantly clear. That when you're confronting a residential community,  
17 that you don't want anything higher than x. And if the master plan says that then that's  
18 what will happen. Now, if you turn to circle 24 in your packet, you've got these criteria laid  
19 out and there are a couple of things here that I'd draw your attention to and I just want to  
20 point out that in line 352, the language that the Board must find, that the project meets the  
21 requirements of 52 and also must find the satisfaction of the criteria... we're a little worried  
22 about that.

23 MICHAEL KNAPP: Okay, let's come back...

24 ROYCE HANSON: Making it too rigid. You may not want to deal with that now, but...

25 MICHAEL KNAPP: It's noted. So let's come back to that. Let me get to the two comments  
26 that we have remaining; Councilmember Floreen and then Councilmember Leventhal.

27 NANCY FLOREEN: Thanks. I'm trying to dredge up in my recollection the elements of the  
28 NRC approval because I was--I participated in that my youth.

29 ROYCE HANSON: No.

30 NANCY FLOREEN: And I just want to comment... I don't recall a height issue there ever  
31 being relevant. One of the concerns was as typical traffic and a lot of attention was giving-  
32 -I think to the--perhaps it was the first TMD project where you had a Traffic Management  
33 District issue and all kinds of criteria for those, the tenants of that building, to adhere to.  
34 Other not fully appreciated facts was they also had a housing component that ultimately  
35 was constructed across the street from the White Flint. Not the--you know, the White Flint  
36 Metro Station which was a little long in coming but was part of the NRC approval. And I  
37 think it also had stormwater management/parking issues as well which I actually can't  
38 recall at this point. My only point was that was before actually the North Bethesda master  
39 plan. It was before a lot of the detail, worrying about things; and I think over time it has  
40 proven to be a pretty good project. You could argue about whether there should be, at that  
41 time, it wasn't emphasizing a walkable Rockville Pike experience. I don't know that that



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1 segment of Rockville Pike was ever going to get to that point. But it has some very nice  
2 features, I think, that have served the commuting public very well there. And that was in  
3 the absence of all these rules and standards. So it was an optional method under some  
4 zone and I don't remember what zone it was.

5 JEFF ZYONTZ: TSM.

6 NANCY FLOREEN: It was TSM; might've been the first one. And I think it produced with a  
7 lot of flexibility within that set of standards. A good project that I think the community can--  
8 it's still a statement of design interest, I think, along that stretch; a lot of that was probably  
9 without any input from the reviewing bodies as much as it was the desire of the people  
10 building the project to build something interesting and attractive. And I just want to  
11 emphasize that were a lot of other pieces that go into that analysis, not the least of which,  
12 I think, will continue to be in all these places which is the green building stuff and the  
13 green space issue. And that, which comes up in direct conflict to how much you  
14 encourage buildings to cover the land and how much you encourage the height because  
15 that is going to continue to be a challenge, I think, for this county... balancing a  
16 preservation of open space and greenery of one sort or another, whether or not it's on top  
17 of the garage. How you address on site stormwater management which is incredibly  
18 important to the overall environmental objectives and force your relocation of structures in  
19 different fashion. So I think the point that I wanted to make is we can't predict the future.  
20 And sometimes you get it right and sometimes you get it wrong, but I think it's better to  
21 have more flexibility rather than less to encourage good design and creative thinking and  
22 responsiveness to evolving community needs and, of course, our job is to deal with the  
23 details. But the end result is relatively unpredictable, I think, based on any particular  
24 picture that you see. We don't know what the market will bring and whether, given all the  
25 other kinds of obligations that we don't even talk about, which are the impact taxes and  
26 traffic standards that people have to meet... those are as much if not more a constraint on  
27 getting this stuff done as the zone itself. So I think it's important to just look at the big  
28 picture here and make sure that we have the kinds of creative tools in place that allow  
29 good projects to go forward. I think NRC is an example of one of those that didn't have  
30 that many tools to hamstring it. Plenty of engagement, though, and a lot of new thinking  
31 then without a lot of master plan or zone direction.

32 MICHAEL KNAPP: Councilmember Leventhal, a last question or statement before lunch.

33 GEORGE LEVENTHAL: Okay. So, John, you said that the NRC Building has 3.5 FAR?

34 JEFF ZYONTZ: Three.

35 JOHN CARTER: Three FAR.

36 GEORGE LEVENTHAL: I'm just trying to understand. Do you know, is that the tallest  
37 building in Montgomery County? What is the tallest building in Montgomery County?

38 JOHN CARTER: That one and the Washingtonian kind of are...

39 GEORGE LEVENTHAL: They're about the same?

40 JOHN CARTER: Yeah.





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1 GEORGE LEVENTHAL: So, just to be clear... and I understand that everything that  
2 happens will be governed by a master plan, it's got to go to site plan approval and all that.  
3 But, just so we can get our minds around this... we are potentially, by approving the zone,  
4 opening the door to buildings that are way taller, I mean, 25% taller than anything we've  
5 got in the county today. Just, I mean, that's an important point. I'm not saying that's bad or  
6 good, but I just--it helps us to understand what we're grappling with.  
7 JOHN CARTER: Potentially, but remember that I want to give you confidence about this  
8 height Councilmember Berliner talked earlier, well, what about the CBDs, or that seemed  
9 to work. But the master plan... you're not going to find the height in the zone, you're going  
10 to find it in the master plan.  
11 GEORGE LEVENTHAL: I got that.  
12 JOHN CARTER: So, actually, it worked through the master plan.  
13 GEORGE LEVENTHAL: I understand. I'm not saying it's--I mean, height that Metro has  
14 much, you know, to argue for it. I'm just...  
15 JOHN CARTER: Yeah.  
16 GEORGE LEVENTHAL: ...getting my mind around it. Because the NRC building seems,  
17 in my mind, big, when I think of, you know...  
18 JOHN CARTER: Yeah. Yeah.  
19 GEORGE LEVENTHAL: And you've answered the question; it is. And the Washingtonian  
20 is the biggest. So that's the first question and then the second question, too, is--I  
21 understand the master plans are coming to us and we've got Twinbrook now. We're going  
22 to have White Flint, we're going to have Germantown. The three are different. We're not  
23 talking about...  
24 JOHN CARTER: Yes.  
25 GEORGE LEVENTHAL: ...although you're applying the zone in all three. You're not  
26 looking at heights in Germantown, Mr. Chairman, which you're starting to work on  
27 Germantown. That would be anything like what you're looking at White Flint and  
28 Twinbrook would be somewhat smaller than White Flint.  
29 ROYCE HANSON: That's correct. We're not looking at the same height levels in each of  
30 these places.  
31 GEORGE LEVENTHAL: Well, it's certainly not until you get transit there.  
32 JOHN CARTER: Right.  
33 GEORGE LEVENTHAL: Which is at least a decade. At least, one decade.  
34 JOHN CARTER: And certainly, Twinbrook, there's nothing close to that. It's half.  
35 GEORGE LEVENTHAL: The master plan is not talking about that. So this whole  
36 discussion of 4 FAR... you could have the short, squat building. I do get how FAR works.  
37 JOHN CARTER: Yeah.  
38 GEORGE LEVENTHAL: So we shouldn't be too alarmed that the prospect of massive  
39 building heights even though, theoretically, it authorizes buildings that are 25% taller than  
40 the tallest buildings we have in Montgomery County area.  
41 MARLENE



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1 MICHAELSON: I think that's right and I think you have a very different vision; you have the  
2 same zone, but a different vision of what the ultimate development is going to look like  
3 and, you know, one of our concerns was if you are a citizen and you are trying to  
4 understand what is recommended for an area, you will no longer just be able to look at the  
5 zoning map and say, "Ah-hah, it's TMX, I have an idea," in order to have a sense of the  
6 height and the FAR. You will also have to waive the master plan which is a slightly more  
7 cumbersome exercise.  
8 GEORGE LEVENTHAL: We wouldn't want to make it easy for our constituents.  
9 MARLENE  
10 MICHAELSON: Yes.  
11 ROYCE HANSON: On the other hand, the law now requires a new buyer to be informed  
12 of the master plan recommendations. And I think, fortunately, for the sanity of everybody,  
13 it does not require that they read the zoning ordinance.  
14 JEFF ZYONTZ: Oh, good. But then again, the--you know, the average resident has been  
15 there seven years; he hasn't read it for a while. So his memory might have decayed, but  
16 he could refer to the zoning map and see that it was higher or lower by a number.  
17 JOHN CARTER: And then keep in mind what Commissioner--what Councilmember  
18 Floreen was saying... that TSM and TSR has no height limit in it today. Zones have their...  
19 GEORGE LEVENTHAL: How much FAR is allowed?  
20 JOHN CARTER: Three.  
21 ROYCE HANSON: Three.  
22 JEFF ZYONTZ: The difference is that the council makes the determination of what the  
23 height is at the development plan stage in the floating zone. So the council makes the  
24 determination here. Here, you have the Planning Board making the determination based  
25 on the other regulatory factors that you have.  
26 MICHAEL KNAPP: Okay. All right, hold on.  
27 ROYCE HANSON: Well, you have the council doing it in the master plan.  
28 GEORGE LEVENTHAL: Right.  
29 MICHAEL KNAPP: Okay. See, it's a good thing we're having a work session today... lots  
30 of good issues, lots of good issues coming up. Okay, we will back at 1:30. We have one  
31 public hearing, we will turn to a couple small items in legislative session then we have the  
32 Board of Health at 1:45-ish. And then we will turn back to the TMX zone and maybe the  
33 master plan about 2 o'clock. Probably about 2:30. Okay. Thank you very much. We'll see  
34 you all back here about 1:30.

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1



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1 MICHAEL KNAPP: Good afternoon, ladies and gentlemen, this is a public hearing on the  
2 supplemental appropriation to the County Government's FY '09 operating budget,  
3 Montgomery County Fire and Rescue Service, \$1,030,179, for National Urban Search and  
4 Rescue Response System Grant, action as scheduled immediately following the hearing.  
5 There are no speakers for the hearing, and we won't be able to take action because there  
6 are only four councilmembers, so we'll have to hold that until we get everybody else up  
7 here. But there are no speakers, and so this concludes that public hearing and I see no  
8 comments, so we will turn back to action on that as soon as we get enough people to  
9 actually take action. Our second item, Agenda #10, is a public hearing on Expedited Bill  
10 32-08, Bond Authorization would authorize the county to issue certain general obligation  
11 bonds, and action is scheduled in legislative session following the hearings, we need six  
12 votes for that as well, so hopefully, we'll get some folks by the time we get to that point.  
13 This concludes our public hearing. Can we push our...

14  
15 COUNCIL CLERK: I did.

16  
17 MICHAEL KNAPP: Okay, thank you. We turn to-- Can we turn the legislative session with  
18 only four of us?

19  
20 UNIDENTIFIED COUNCILMEMBER: Only if we've got six.

21  
22 MICHAEL KNAPP: No, I know. I'm just-- because we have bills introduced; can I introduce  
23 bills with four people? All right, we now turn to Agenda Item B under Legislative Session  
24 Day #35, Introduction of Bills, Expedited Bill 33-08, Second Hand Personal Property  
25 Amendments, sponsored by the Council President at the request of the County Executive.  
26 Public hearing is scheduled for November 18, at 1:30PM, I see no questions on that  
27 introduction. We also have Expedited Bill 34-08, Commission on Veterans Affairs  
28 Membership, sponsored by the Council President, at the request of the County Executive.  
29 Public hearing is scheduled for November 18th, at 1:30 PM. The only question I had on  
30 that is did we not just do this? Haven't we just approved this one?

31  
32 AMANDA MIHILL: Yes, it takes effect on November 3rd, and so this would increase the  
33 membership by four.

34  
35 MICHAEL KNAPP: Did we even appoint the membership yet?

36  
37 AMANDA MIHILL: Not yet. My understanding is that they're not intending on appointing  
38 members until this bill walks through, and whatever happens with this.

39  
40 MICHAEL KNAPP: Okay. So we don't even-- we haven't even formed them yet, but we  
41 still don't have enough seats for everybody?



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1 AMANDA MIHILL: That's right.

2  
3 MICHAEL KNAPP: Okay. That should be interesting to see. Okay, I don't see any  
4 questions on the Expedited Bill 34-08 either. Okay, thank you very much. We have two  
5 items still remaining, and we still only have four councilmembers, so we will take a short  
6 recess while we find at least two more councilmembers.

7  
8 UNITENTIFIED COUNCILMEMBER: Okay.

9  
10 MICHAEL KNAPP: ...appropriations of County Government's FY '09 Operating Budget,  
11 Montgomery County Fire and Rescue Service for \$1,030,179, for National Urban Search  
12 and Rescue Response System Grant, the source is a federal grant, I'll turn to the Chair of  
13 the Public Safety Committee, Vice-President Andrews.

14  
15 PHIL ANDREWS: Thanks, President Knapp. The Public Safety Committee reviewed this  
16 on October 23rd, and unanimously recommends approval. This does not require any  
17 match by the county, it will provide the equipment from FEMA to continue funding training  
18 and readiness as part of the National Urban Search and Rescue Response System. And it  
19 does not have cost sharing either, so the period of grant is from May 1st, 2008 through  
20 August 31st, 2009. and at will, continue to fund the activities of the USAR Team and  
21 enable the county to enhance its preparedness for emergency events, and we  
22 recommend approval.

23  
24 MICHAEL KNAPP: Excellent. I see no discussion on support of the supplemental  
25 appropriation as recommended by the Public Safety Committee, indicate by raising your  
26 hand. That is unanimous, 6-0, thank you. We now have-- I see... Let's slide back to  
27 Legislative Session Day #35. Madame Clerk, we have a journal to approve.

28  
29 CLERK: You have the journal of October 14th for approval.

30  
31 MICHAEL KNAPP: Is there a motion?

32  
33 VALERIE ERVIN: I move the approval.

34  
35 MICHAEL KNAPP: Moved by Councilmember Ervin, is there a second?

36  
37 ROGER BERLINER: I second.

38  
39 MICHAEL KNAPP: Seconded by Councilmember Berliner, and the discussion of the  
40 journal, seeing none, all in support indicate by raising your hand. That is unanimous  
41 among those present, thank you. We now turn to Call of Bills for Final Reading, Expedited



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1 Bill 32-08. Bond Authorization, is there any discussion? I guess we only have a  
2 recommendation, so we need a motion for Expedited Bill 32-08.

3  
4 ROGER BERLINER: I move.

5  
6 MICHAEL KNAPP: Moved by Councilmember Berliner, seconded by Valerie Ervin, I see  
7 no discussion. Madame Clerk, if you would call the roll.

8  
9 CLERK: Mr. Praisner...

10  
11 DONALD PRAISNER: Yes.

12  
13 CLERK: Mr. Leventhal...

14  
15 GEORGE LEVENTHAL: Yes.

16  
17 CLERK: Ms. Ervin...

18  
19 VALERIE ERVIN: Yes.

20  
21 CLERK: Mr. Berliner...

22  
23 ROGER BERLINER: Yes.

24  
25 CLERK: Mr. Andrews...

26  
27 PHIL ANDREWS: Yes.

28  
29 CLERK: Mr. Knapp...

30  
31 MICHAEL KNAPP: Yes. Motion carries 6-0, thank you very much. And we now have  
32 action on the following. So, these are-- these specific resolutions, Mr. Faden? MIKE  
33 FADEN: Yes, two separate resolutions on one packet.

34  
35 MICHAEL KNAPP: Okay. So first-- Well, we'll do them jointly, but first is resolution to  
36 consolidate the new bond authorization without previously authorized general obligation  
37 bonds, and the second is the resolution to authorize an increase in bond anticipation  
38 notes and to consolidate this new authorization with all previously authorized bond  
39 anticipation notes. Is there a discussion? Actually, is there a motion?

40  
41 ROGER BERLINER: I move.

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1 MICHAEL KNAPP: Moved by Councilmember Berliner, is there a second?

2  
3 VALERIE ERVIN: I second.

4  
5 MICHAEL KNAPP: Seconded by Councilmember Ervin. You guys are a good team today,  
6 very well done. Is there a discussion? Seeing none, all in support of action on the two  
7 resolutions as stated, indicate by raising your hand.

8  
9 MICHAEL KNAPP: That is unanimous among those present, thank you very much. And  
10 we now turn to-- We become the Board of Health. We have two elements as the Board of  
11 Health, the first is an update from the county health officer. Unfortunately, Dr. Tillman's  
12 mother passed away this weekend, and so she is obviously not with us. Helen Lettlow, our  
13 Deputy Director for Public Health and Acting Health is present. Clark Beil will be providing  
14 the briefing to the council, and once we conclude, that update will then turn the annual  
15 meeting with the Commission on Health. Chair of the HHS Committee, any opening  
16 remarks, Mr. Leventhal, before we get started?

17  
18 GEORGE LEVENTHAL: I'm sorry, this the risk of having a new laptop computer. We  
19 welcome the presentation, I have no opening remarks.

20  
21 MICHAEL KNAPP: Okay, very good.

22  
23 CLARK BEIL: I'm Clark Beil, I'm the Senior Administrator for Licensure and Regulatory  
24 Services.

25  
26 HELEN LETTLOW: Good afternoon, my name is Helen Lettlow. I'm the new Deputy  
27 Health Officer representing Dr. Tillman.

28  
29 MICHAEL KNAPP: And you are very new, are you not?

30  
31 HELEN LETTLOW: Am I what?

32  
33 MICHAEL KNAPP: That you're very new.

34  
35 HELEN LETTLOW: Oh, I've been here four weeks.

36  
37 MICHAEL KNAPP: Welcome...

38  
39 HELEN LETTLOW: Thank you, and I'm honored to be here to present before the council. I  
40 was actually here for the teen pregnancy presentation and met Councilman Berliner  
41 yesterday at the Mobile Med Annual Meeting, so this is a real honor to present.



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1 MICHAEL KNAPP: Good. Well, thank you, thank you for joining us.

2  
3 CLARK BEIL: Okay, are you ready to begin?

4  
5 MICHAEL KNAPP: Sure.

6  
7 CLARK BEIL: Licensure and Regulatory Services is made up of two elements:  
8 environmental health services and the healthcare and group residential facilities. We'll  
9 start with environmental health services; that's a regulatory service that enforces local and  
10 state regulations in over 5,000 licensed facilities in the county. You can see there are  
11 listings of the types of the facilities that are licensed, the largest proportion thus being food  
12 service and swimming pools, which take up the vast majority of our time. And now, you  
13 see a summary at the bottom of over 5,000 licensed facilities. Each of those licensed  
14 facilities requires inspections and you can see here, this is the total summary for the year  
15 2008, the total number of inspections that were done at each of these licensed facilities,  
16 and there at the bottom, a total of over 10,000 inspections were conducted this past year.  
17 With food service facilities we have over 3300 licensed facilities, they're broken into three  
18 categories: a high, medium and low priority, and that's based on the complexity of the type  
19 of food and health risks associated with the foods that are being served at those facilities.  
20 It requires, and I have a correction there, that number, it requires over 6800 state  
21 inspections, not the 7300 that are mandated by the state. We do not and have not, for  
22 several years, been able to keep up with those mandated inspections because in addition  
23 to the mandated inspections, we have new openings, new facilities that might open,  
24 complaints, follow-ups on inspections where there might be a problem where we need to  
25 go back and look for corrective actions, and then emergencies such as fires, floods, sewer  
26 backups and water main breaks which take a lot of our time to inspect. The high priority  
27 food service facilities are your typical sit-down restaurants, your more complex type of  
28 restaurants, and you can see we have 1259 of those, and they require three inspections a  
29 year. The medium priorities, those are more like what you would say as your fast food or a  
30 subway substation food service facility. There's 1300 of those, and they're inspected twice  
31 annually. And then low priority, we have 931 inspected annually, just once, and they  
32 typically-- and example of that might be a concession at a movie theatre, that it's only  
33 selling popcorn and package candies. We have a food investigation program, this looks  
34 into food-borne illnesses and potential outbreaks, response to complaints of suspected or  
35 confirmed food-borne illnesses. This past year, we had 34 incidents with 117 individuals  
36 becoming ill from those incidents that were actual confirmed food-borne outbreaks. It's a  
37 three-person team in our office, they inspect the facilities following a complaint, interview  
38 employees and customers, collect food samples and send them off to laboratories for  
39 testing, distribute and retrieve stool sample kits, investigate and attempt to confirm the  
40 infectious agent and source. It's not uncommon for us to never be able to figure out  
41 exactly where the contaminant came from, and then recommend corrective actions to





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1 those facilities. The next largest program we have is swimming pools, there are 646  
2 licensed swimming pools and spas in the county. That is growing everyday. We  
3 conducted 2584 inspections during the season, we attempt to inspect four times annually.  
4 Definitely, once at opening, we always make sure we must have an opening inspection to  
5 make sure that that pool is safe on the day that it opens, and then we attempt to follow up  
6 at least three times through out the season. This year, we had 175 closures. Typically,  
7 those closures are very short-term, often just a few hours, often until they can just re-  
8 establish the disinfectant in the water or the Ph. Rarely does it go more than a day, and  
9 we work with the owners of these facilities to minimize the number of closures. It's mostly  
10 a seasonal service as you would expect, but more and more it's becoming a year-round  
11 as the number of indoor pools grow especially in places like motels and hotels. We also  
12 inspect nursing homes, group homes, and domiciliary care facilities, domiciliary being  
13 assisted living type of facilities. 477 annual re-licensure inspections are absolutely  
14 required, the inspection involves not only checking the physical condition of the facility,  
15 looking for vermin and rodents, and other unsafe situations, but also the food service  
16 inspection if that facility is serving food onsite. We inspect private educational facilities;  
17 that's private schools. There are 246 annual environmental inspections for re-licensure.  
18 We also inspect their foods. And for the state, we conduct the student immunization  
19 record review to confirm that all their students are properly immunized. Summer Camps,  
20 we inspect 119 annual Summer Camps for safety, sanitation and food service, if they are  
21 serving food. We also have a rodent control program which you all probably heard about  
22 from your constituents. We respond, it's complaint-driven. We responded to 576  
23 complaints in 2008. Interesting enough and it may be hard to believe, but 576 is actually a  
24 very low year. The average is usually around 800, one year we peaked at about 1600. So  
25 we get a lot-- it feels like a lot of complaints, but this past year was actually a low one. We  
26 investigate private residence, private and public sector businesses; we provided advice  
27 and information on the eradication and prevention. We try to attend and organize  
28 meetings with community groups and homeowners associations to help educate them on  
29 the issue. And then, we do a great deal of collaboration with other agencies to address  
30 these issues such as housing code enforcement and solid waste. We do special food  
31 service, there were 887 special food events in Fiscal Year '08 and that's another area that  
32 continues to grow. There are temporary facilities operating at fairs, carnivals, churches,  
33 school and sports events. We inspect prior to opening and then we attempt to return if any  
34 of these events are going to extend for a period of time. It does result in a large number of  
35 after-hour and weekend type of inspections which does drive up our overtime cost. We do  
36 a West Nile mosquito program; this program has suffered significant cutbacks due to the  
37 staffing shortages and increased workload in the other areas. It fortunately is only a  
38 seasonal type of program that we have to deal with, and what we do is monitor traps  
39 through out the county, collect samples and send them to the state labs for testing and  
40 they test for the West Nile virus. We maintain databases and then help educate the public  
41 and provide advice to communities, most often we'll get a call from a community saying



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1 that they just feel like they have an extraordinary number of mosquitoes,. We'll go out and  
2 look around and see if we can find out where the sources of those mosquitoes might be  
3 coming from. We do have the trans fat ban program, the regulations require that by 2008  
4 we've eliminated trans fats in frying oils and spreads. And then by 2009, the regulations  
5 will apply to all oils used for frying, yeast dough, or cake batter, and all other foods  
6 containing trans fat. This is required workload of approximately two additional work years,  
7 and we have been given approval to at least fill one of those positions. We are even  
8 holding on that at this time because of the county budgetary issues. Smoking regulations,  
9 smoking is not permitted as you probably know in restaurants and buildings open to the  
10 public. We typically respond to complaints. Smoking is discouraged within 50 feet of the  
11 entrance to a government-owned or leased building. And this past year, we responded to  
12 222 smoking violations. We do a plan review service, and this is a service for our  
13 community to review plans prior to construction or renovation so that they are in  
14 compliance when they go into operations and don't get a surprise at the day of the  
15 opening that they aren't in compliance. We review and approve plans and equipment for  
16 new and remodeled service facilities. We have one dedicated full-time staff person that  
17 does nothing but plan a review for the department so that we have a consistency in those  
18 reviews. We conduct plan reviews for conferences with the business representatives, and  
19 we do conduct a pre-opening inspection just before licensure to make sure that everything  
20 is in order for them. The challenges facing the environmental health services right now,  
21 our mobile units, we're seeing a significant increase in mobile units traveling through the  
22 county, they're difficult to locate and track because they're always on the move. They  
23 come from out of the county or out of the state; and just setup business here in the county  
24 and without knowledge on our behalf. And they tend to operate during odd hours and  
25 weekends, which makes it that much more difficult to catch up with them. Farmer's  
26 markets, rapidly growing, demanding a significant increase in the amount of time. And we  
27 have identified a need for vendor education on safe food handling practices, I'm working  
28 with economic development. We are scheduling now a post-season educational and input  
29 event for us to get feedback from the participants and organizers, and then we will also  
30 organize a pre-opening training education event to hopefully smooth the process. Another  
31 challenge that we're finding in the county, this was really brought to our attention by  
32 police, is not properly licensed dance events that are taking place in buildings that are not  
33 zoned for these events. And these events, while they're often marketed to minors, involve  
34 illicit activities such as alcohol, drugs and nudity. As I mentioned there, they're often  
35 marketed toward minors as "Sweet 16" parties. The promoters often come from outside  
36 the county; they aren't licensed or regulated in any way. And so, we are actively working  
37 and we've developed a task force with police, fire, liquor control to try and get a handle on  
38 these types of events taking place. The next element of licensure and regulatory services  
39 are healthcare facilities.

40  
41 GEORGE LEVENTHAL: [INDISTINCT]



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1 MICHAEL KNAPP: Let's do the typical questions for that first, Bob.

2  
3 CLARK BEIL: Continue?

4  
5 MICHAEL KNAPP: Oh, yeah.

6  
7 GEORGE LEVENTHAL: How is it-- I don't understand, these dance parties, how they  
8 come under HHS jurisdiction.

9  
10 CLARK BEIL: Actually, they aren't necessarily. However, we do require an enterprise  
11 license if you're going to operate a dance hall. So dance halls are regulated in the county,  
12 but these folks are setting up without getting that proper licensing, so the police came to  
13 us and said, "Can you tell us what is actually required to have an enterprise license?" And  
14 we gave them the guidelines, and so, now, the police have a tool that when they go into  
15 one of these dance events, they can say, "Do you have an enterprise license? Can you  
16 show it to me because it needs to be on display."

17  
18 GEORGE LEVENTHAL: So that's one tool?

19  
20 CLARK BEIL: Now, one tool.

21  
22 GEORGE LEVENTHAL: So that presumably includes liquor sales, which is probably...

23  
24 CLARK BEIL: Absolutely. Liquor is a big one. If they don't have that liquor license, we will  
25 shut them down. We see a lot of...

26  
27 GEORGE LEVENTHAL: You shut them down or the police will shut it down?

28  
29 CLARK BEIL: Well, the police, the police.

30  
31 GEORGE LEVENTHAL: Okay, yeah.

32  
33 CLARK BEIL: But we work as a team.

34  
35 GEORGE LEVENTHAL: I understand why it's a problem, I still don't understand why it's  
36 an HHS problem.

37  
38 CLARK BEIL: It only falls under HHS program...



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1 GEORGE LEVENTHAL: I heard you, dance hall, I got it, because of the dance hall. But it  
2 would seem to me that the police ought to primarily be shutting down sales of the alcohol  
3 to minors, use of illegal drugs...

4  
5 CLARK BEIL: They are the primary regulatory agency.

6  
7 GEORGE LEVENTHAL: Right.

8  
9 CLARK BEIL: Enforcement.

10  
11 GEORGE LEVENTHAL: And liquor control?

12  
13 CLARK BEIL: And liquor control.

14  
15 GEORGE LEVENTHAL: Okay.

16  
17 CLARK BEIL: Healthcare facilities, care for over 10,000 Montgomery County residents,  
18 which include 7 hospitals, 33 nursing homes, 26 domiciliary or large assisted living. And  
19 then, there are other facilities such as group homes for minors, developmentally disabled  
20 group homes, chronically mentally ill, and there are 149 small assisted living or elderly  
21 group homes. In the nursing homes, in 1966, Medicare was passed. We actually conduct  
22 the federal inspections for compliance with the federal regulations that exist today, setting  
23 minimum standards for residential care and services. In addition, the facilities must comply  
24 with state and county regulations.

25  
26 ROGER BERLINER: I got a question.

27  
28 CLARK BEIL: Yeah.

29  
30 ROGER BERLINER: And how are we doing in that regard?

31  
32 CLARK BEIL: I'm sorry?

33  
34 ROGER BERLINER: And how are we doing with the result of those inspections?

35  
36 CLARK BEIL: Much better. Uhh, you know, because this is really something that we put a  
37 lot of emphasis on, and we do get to these inspections. They have to be conducted or the  
38 place can't be licensed.

39  
40 ROGER BERLINER: Understood. And what are you finding in your inspections, how are...



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1 CLARK BEIL: There's a future slide, okay? I can point out and provide them.

2  
3 ROGER BERLINER: Thank you, I'm just always thinking ahead.

4  
5 CLARK BEIL: These inspections are conducted usually by a team of two to five registered  
6 nurses. They're always unannounced. They're often complex and can last up to four days.  
7 Follow-up surveys are conducted when deficiencies are identified, and we also have to  
8 respond to complaints. In FY '08, we had 500 complaints investigated by these nurse  
9 surveyors, and then, that results in additional follow-up surveys.

10  
11 ROGER BERLINER: Is that number more or less than the year before?

12  
13 KATHY SCHOONOVER: More.

14  
15 ROGER BERLINER: Is it fast growing?

16  
17 KATHY SCHOONOVER: It peaked last...

18  
19 MICHAEL KNAPP: Come up and join us, please.

20  
21 CLARK BEIL: Yeah. This is Kathy Schoonover, and she's the manager of this program.

22  
23 KATHY SCHOONOVER: Right.

24  
25 ROGER BERLINER: Can you turn the microphone?

26  
27 KATHY SCHOONOVER: Yes sir. It peaked this last Fiscal Year, they were averaging like  
28 300, 400. We attributed it to they had to report more about abuse in their facilities, and  
29 those are like facility-reported like a resident-to-resident, somebody hit another resident,  
30 and they had to report those so there was an increase.

31  
32 ROGER BERLINER: So you attribute that to the reporting requirement as opposed to  
33 some external...

34  
35 KATHY SCHOONOVER: Yes. Yep.

36  
37 CLARK BEIL: And there you have the Top 10 deficiencies we come across. Are these in  
38 priority?

39  
40 KATHY SCHOONOVER: No.



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1 CLARK BEIL: Okay.

2  
3 DONALD PRAISNER: You say the failures are primarily because--

4  
5 MICHAEL KNAPP: Mr. Praisner, Don, turn on your microphone.

6  
7 DONALD PRAISNER: Well, you said that the failure is in part, mostly because of  
8 inadequate training on the part of the nurses and staff?

9  
10 KATHY SCHOONOVER: A lot of that is yes, a lack of critical thinking skills and a lack of  
11 training.

12  
13 CLARK BEIL: Deficiency reports for each facility is provided with a detailed report that list  
14 out their deficiencies and they must respond within 14 days with an acceptable plan of  
15 correction. They are and these survey reports are public record, must be posted and  
16 readily available to anyone that asks for them. Enforcement actions, nursing home  
17 enforcement regulations were enacted July 1st, 1995, and deficiencies are scored based  
18 on the effects of the resident care and safety. You can see there, there are penalties  
19 between \$50 and \$10,000. Most recently, a facility recently received the highest imposed  
20 by the Office of Healthcare Quality, of \$80,000 in addition to other remedies that were  
21 required, and that was here in Montgomery County.

22  
23 KATHY SCHOONOVER: Yes.

24  
25 MICHAEL KNAPP: Fairly auspicious, okay.

26  
27 CLARK BEIL: The emerging issues in healthcare facilities are the significant difficulty of  
28 finding and keeping qualified competent staff. A definite shift, we see this across the entire  
29 industry, shifting from Registered Nurses to Licensed Practical Nurses. And a just plain  
30 old sufficient numbers of staff, it's becoming more and more difficult to cover their staffing  
31 needs. Likewise, the patients themselves have an increased acuity and complexity of their  
32 illnesses and chronic illnesses. Many patients requiring ventilators, wounds, dialysis,  
33 these are all things, not too long ago we would have expected it to be hospitalized care  
34 and now it's becoming nursing home care. And then, we are also pushing our nursing  
35 homes towards greater responsibility in the area of emergency preparedness, both in  
36 terms of their continuity of operations plans and evacuations plans, as we all saw the  
37 tragedies in Katrina of improper planning for these kind of events can be tragic, and we're  
38 putting a significant emphasis encouraging our facilities to develop appropriate plans for  
39 those kind of events. That's the end of our presentation.

40  
41 MICHAEL KNAPP: Questions? Vice-President Andrews?



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1 PHIL ANDREWS: Thank you for the presentation, that was very thorough. In terms of  
2 public access to the commission, I don't know, my understanding is, isn't a roster listed on  
3 the webpage for the Commission as to the, you know, the key contact people on different  
4 areas. And so, if that's the case, it seems to me that would be helpful in terms of the public  
5 just being able to go directly to the person who they need to talk to.

6  
7 CLARK BEIL: And you're referring to the Department of Licensure?

8  
9 PHIL ANDREWS: Yeah, the Department of Licensure.

10  
11 CLARK BEIL: Yes, our website is down, that is one of our priorities, to get that site up.

12  
13 PHIL ANDREWS: Okay, good.

14  
15 CLARK BEIL: It's another funding issue, but we're working on it. I'm actually seeking some  
16 volunteers to help us with it.

17  
18 PHIL ANDREWS: Oh, okay, really. All right, glad to hear.

19  
20 HELEN LETTLOW: I would also say that our website, in general, for HHS, needs to be  
21 more user-friendly and customer oriented even though that's the intent of the current  
22 configuration, is that one can just press on a particular program or service even though it's  
23 not necessary with the same, it's not problematically driven, our website right now, like for  
24 instance if you-- a person is interested in say TV or nursing homes, there are web links  
25 presently available, but we need to make some improvements across the whole website.  
26 We will note that you're interested in that.

27  
28 MICHAEL KNAPP: Councilmember Praisner?

29  
30 DONALD PRAISNER: Our group homes provide basically the same services that a  
31 nursing home provides, only in a much smaller scale. Yet more and more, they're  
32 expected to meet the same standards that nursing homes were expected to meet. And it's  
33 becoming very difficult for them especially in providing adequate nursing. We all know that  
34 nursing is a very scarce commodity, and for the non-profits to pay for a whole nurse to  
35 take care of maybe four or five clients, it's becoming increasingly difficult for them to do. At  
36 least the nursing home has a scale of efficiency to it that allows them to maybe have a  
37 nurse for every 10 to 15 clients, which a group home can't do. And it's presenting a very  
38 crucial problem for those people who are running group homes. I have to understand the  
39 need to keep up to state standards, county standards, but it is making them increasingly  
40 difficult to provide the role to the clients.



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1 CLARK BEIL: It is a serious challenge for these people, and there are several I can think  
2 right off the top of my head who are having a very tough time keeping up with the state  
3 regulations and are actually falling behind.

4  
5 MICHAEL KNAPP: I have just a couple of questions, it's always one of those things that  
6 you find after being in the council for a while, that you think you understand all the pieces  
7 of-- for a government isn't, and we've learned whole new areas which we hadn't even paid  
8 attention to. So, I should spend more time with the HHS Committee, I guess.

9  
10 GEORGE LEVENTHAL: We'd love to have you, Mr. President. Anytime, you're always  
11 welcome.

12  
13 MICHAEL KNAPP: Okay. How many employees do you have that are doing all of these  
14 various regulatory activities?

15  
16 CLARK BEIL: I have 19 inspectors.

17  
18 MICHAEL KNAPP: Nineteen inspectors? And when you do like the summer, for the  
19 swimming pools in the summer, do you bring on part-time employees to do that or there's  
20 just the 19...

21  
22 CLARK BEIL: No, we just sort of shift our workload over to the pool. There's that week,  
23 you know, the last week of May, a very few restaurants get inspected and a lot of pools  
24 get inspected.

25  
26 MICHAEL KNAPP: So when I'll...

27  
28 UNIDENTIFIED COUNCILMEMBER: [INDISTINCT]

29  
30 CLARK BEIL: Yeah.

31  
32 MICHAEL KNAPP: And how has the number of licensed facilities increased over the-- I  
33 mean, I guess, first, how is this, how has the number of employees we have grown and  
34 how is the number of requirements for inspection grown?

35  
36 CLARK BEIL: I can get you much more detail, we do have that information, I'm sorry, I  
37 didn't bring it. But I can tell you offhand, the number of facilities has been growing  
38 dramatically, our staffing has stayed stable for a number of years.

39  
40 MICHAEL KNAPP: Growing because we're actually having more things open or is it  
41 because we're having just more regulation from State and Federal level?





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1  
2 CLARK BEIL: The regulations have stayed relatively stable with some minor changes, it's  
3 mostly just growth.

4  
5 MICHAEL KNAPP: Just increased activities?

6  
7 MICHAEL KNAPP: You had talked earlier; I believe it was the Federal regs. Hold on. The  
8 nursing home regulations you had talked about, is that-- are those regulations from which  
9 level of government?

10  
11 CLARK BEIL: Federal, state and...

12  
13 MICHAEL KNAPP: Okay, the NH enforcement regulations, is that what it is, you talked  
14 about that, enacted July 1st, of '95. So those are...

15  
16 KATHY SCHOONOVER: There's a Federal from CMS.

17  
18 MICHAEL KNAPP: Okay.

19  
20 CLARK BEIL: Which is Medicare.

21  
22 MICHAEL KNAPP: All right. And-- but we, as a county, have the responsibility to do the  
23 enforcement.

24  
25 CLARK BEIL: Do the inspections.

26  
27 MICHAEL KNAPP: So as those requirements change or become more detailed, do we get  
28 additional resources from the Federal government to make sure we can address that?

29  
30 KATHY SCHOONOVER: Not at the moment, I mean the...

31  
32 MICHAEL KNAPP: But you remain hopeful?

33  
34 KATHY SCHOONOVER: Yes, yes, I'm hopeful.

35  
36 MICHAEL KNAPP: Okay, interesting. Now, it's a very good presentation. Are there any  
37 other questions from councilmembers? I don't see any. Thank you very much, I think you  
38 did a very good presentation. Thank you.

39  
40 CLARK BEIL: Thank you.



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1 MICHAEL KNAPP: And we now have a presentation from the Commission on Health.  
2 Welcome...

3  
4 WENDY FRIAR: Good afternoon. I'm Wendy Friar, the Chair for the Montgomery  
5 Commission on Health. With the expertise of our past Chair, Dan Muscowitz, we  
6 submitted our annual report. And my remarks today will be brief, but greater detail can be  
7 found in the written testimony that's already been submitted. The primary mission of the  
8 Montgomery County Commission on Health is to provide advice to the County Executive  
9 and the County Council on matters related to health and to monitor the Department of  
10 Health and Human Services in its efforts to address public health needs for the residents  
11 of Montgomery County. The Commission has 19 Commissioners that represent a cross-  
12 cutting example of consumers and providers of healthcare. The commission is also  
13 pleased to have a representative from the Medical Society, Dr. Peter Scheer, and the  
14 continued support of the County Public Health Officer, Dr. Ulder Tillman, and Ex-Officio  
15 non-voting member, and several county staff members, Doreen Kelly, Manager of the  
16 Office of Partnerships, and Janine Goldcuster, a Program Specialist who provides  
17 administrative support. And prior to his retirement, the Deputy Health Officer, Rick  
18 Helfrich; and until recently, Mitchell Buerger, a County Health Planner. These folks have  
19 been extremely friendly and supportive to the Commission and have been a tremendous--  
20 has brought a lot to our Commission meetings. We're very fortunate also to have 12  
21 engaged Commissioners who act as unofficial liaisons to other Boards, Commissions and  
22 Committees within the county. Today, in addition to the continued support of Dr. Tillman,  
23 Doreen, Kelly and Janine Golcusta, Helen Lettlow, the new Deputy Health Officer, and  
24 Linda McMillan, County Council Staff Liaison, will also be attending out meetings. All of  
25 these people, very importantly, help sustain a transparent relationship between the county  
26 government and the Commission on Health. Historically, the Commission has used a  
27 variety of approaches to carry out its mission. Multiple testimonies have been provided to  
28 the County Executive. Last year, a testimony was provided on a worker's safety initiative  
29 and on the budget priorities prepared for the County Council's public hearing on the  
30 County's Executive proposed FY '09 budget. Through our liaisons with the Commission on  
31 Aging, the Commission on Health continues to eagerly and jointly support the need for the  
32 community health improvement process (CHIP). Today, I am pleased and proud to  
33 mention Dr. Dwayne Taylor, our liaison to the Montgomery County's Advisory Board is  
34 growing in his roles and responsibilities as a liaison. We've also had a voice through our  
35 letter writing such as the letter to the County Council in support for special appropriation to  
36 install sprinklers in a group home and the County Executive regarding the workers' safety  
37 health initiative. We don't remain silent on issues that are a priority to the Commission. In  
38 May 2008, Marcus Pisuera, who is the current Vice-Chair and I provided a formal  
39 presentation to the Montgomery County Medical Society on health disparities. This  
40 discussion resulted in their interest in our submitting to their monthly newsletter  
41 information about health disparities. The relationships with other Boards, Committees and



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1 Commissions has also provided the Commission visibility such as the time that in the past  
2 year Dan Muscowitz and Marcus Pisuera taped an episode of Seniors Today, a cable TV  
3 show sponsored by the Commission on Aging, the Office of Public Information, the  
4 Department of Health and Human Services. The show focused on disparities in the  
5 county, one of the Commission's ongoing priorities. Due to the high level of commitment  
6 and interest in the community, the Commission is reactive and responsive. Last year,  
7 there was a concern about workers' safety incidents disproportionately affecting  
8 minorities. And although a private coalition was formed independently of the Commission,  
9 a Commission on Health taskforce was involved in the genesis of the Montgomery County  
10 coalition on occupational safety and health, as also known as MOSH. Our members also  
11 actively attend a variety of meetings in the County such as the Latino Health Initiatives,  
12 Senior Plan Advisory Committee, Obesity Task Force, African-American Health Program,  
13 Community Health Improvement Process Advisory Board and the School Health Board.  
14 This fiscal year we look forward to being more involved through a greater exchange of  
15 information and providing support whenever possible. Every year, the Commission on  
16 Health has an annual retreat to identify key priorities. This year our priorities-- this past  
17 year, excuse me, our priorities included advocating for funding of each community health  
18 improvement process, providing outreach and collaboration in the community, eliminating  
19 and reducing health disparities among racial and ethnic groups, providing support to the  
20 Minority Health Initiatives and programs and promoting healthy lifestyles. These priorities  
21 were addressed through three committees, a health equity which focused on reducing  
22 health disparities and promoting access to care for all, support of the County Minority  
23 Health initiatives and programs infrastructure, provide support and expertise and  
24 advocacy, healthy lifestyle promotion through the utilization of physical exercise resources  
25 within the county. Although the Commission typically has three primary areas of concern  
26 that are addressed through Committees throughout the year, work groups are also formed  
27 so that the Commission could be flexible to address other issues in a dynamic manner.  
28 This year, as discussed at our retreat just two weeks ago, we expected the three priorities  
29 will be viewed in terms of needs and resources. The three priorities are health disparities  
30 and the economic crisis among vulnerable populations which will be hardest hit, culturally  
31 tailored preventions such as hepatitis B in the Asian-American community, mental health  
32 and stress issues in the Latino-American community and infant mortality in the African-  
33 American community, and public-private partnerships that utilize untapped resources in  
34 the community. Finally, the Commission has helped with keeping its finger on the pulse by  
35 having significant ties to the Montgomery County Department of Health and Human  
36 Services. In addition to Dr. Tillman, who provides informative monthly health service  
37 reports with emphasis on the hot spots in the county, we've also been honored with such  
38 speakers such as Judy Covitch, who is a director of School Health Services who shared  
39 with us how the Montgomery County public schools are dealing with MRSA, the  
40 Methicillin-resistant Staphylococcus aureus, a potentially fatal bacteria that's resistant to a  
41 broad spectrum of antibiotics commonly used to treat it. Colleen Ryan Smith, the county



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1 epidemiologist who spoke to us about the committee health improvement process. And  
2 Sonia Mora, manager of the Latino Health Initiative gave us and in-depth appreciation of  
3 the Latino health issues as discussed in the blueprint. The Commission on Health was  
4 also debriefed monthly on the Maryland State Legislation by Mitchell Buerger, a county  
5 health planner. As noted by my predecessors, the Commission is comprised of diverse  
6 people who have broad experiences in education and public health and other related  
7 health issues. We're also a group of people who deeply care about making a positive  
8 difference in the community. As Chuck Schwartz said a few weeks ago at our retreat, "We  
9 can do it without you but we can do it better with you." We welcome the opportunity to join  
10 you and work cooperatively with the Council throughout the year to ensure the overall  
11 health of our community, thank you.

12  
13 MICHAEL KNAPP: Okay, thank you very much. Vice-President Andrews?

14  
15 PHIL ANDREWS: Thank you very much and thank you for your good work. We really  
16 appreciate the role of the Commission and the time that is put in by all the members. It's  
17 one of the things that makes our county great is having so many public-spirited people  
18 who serve on Boards and Commissions, so thank you for your leadership on that and  
19 thanks especially for weighing on the special appropriations for the sprinklers for group  
20 homes. That's an important initiative and the county is now-- the Council has now  
21 appropriated, I think, \$400,000 in two different appropriations to do that and I think we're  
22 most of the way there, I think, after that second appropriation but there may be a little bit  
23 more to go. That's important because it's among our most vulnerable residents and unable  
24 to possibly get out on their own. So, thank you for weighing in.

25  
26 WENDY FRIAR: Thank you.

27  
28 MICHAEL KNAPP: Councilmember Leventhal?

29  
30 GEORGE LEVENTHAL: Yeah, I also want to thank Wendy for her service and the entire  
31 Commission on Health. They're a great resource and I wanted to ask Linda McMillan if  
32 you would work with Linda Lauer to schedule an update on the community health  
33 improvement process or program. I thought it was program but from Wendy's materials it  
34 says process, if the Health Department has got work underway to map that out I would  
35 like to know more about what they are doing. It's something we've wanted to see for some  
36 years, but the money hasn't been there, so, I don't know. I suspect it won't be there in the  
37 FY '10 budget either, but I'd still like to know what sort of planning and maybe we're going  
38 to be having, just so my colleagues are aware, because I think it will be of great interest to  
39 all Council members, not just the HHS committee members. On December 11th, we have  
40 the presidents of all five hospitals coming to speak to the HHS committee to talk to us  
41 about their short and long-term plans. And I've been concerned that as a county we



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1 haven't really developed a strategic approach to help facilities, particularly hospitals, a  
2 community health improvement plan, process or program, whatever "P" stands for, should  
3 assist us in that, but there hasn't been the funding for it up to now, December 11th, isn't  
4 that correct?

5  
6 WENDY FRIAR: Yes, the morning of December 11th.

7  
8 GEORGE LEVENTHAL: The morning of December 11th.

9  
10 MICHAEL KNAPP: Well, I thank the Chair of HHS committee for doing that. I think it's an  
11 important conversation for us to have and we'd love to have the perspective of the  
12 Commission...

13  
14 WENDY FRIAR: That would be great.

15  
16 MICHAEL KNAPP: ...as to kind of the role...

17  
18 GEORGE LEVENTHAL: The Commission is very much welcome to join us on December  
19 11.

20  
21 WENDY FRIAR: Thank you.

22  
23 MICHAEL KNAPP: What is the role that we should be playing, you know. We've got  
24 hospital that applied for certificate of needs, we have-- we as a body tend not to weigh in  
25 on those things because the state has a process but could we have and to the extent that  
26 you guys or folks who generally think more about health than probably we do as a  
27 collective. It would be great to have an insight into what your collective wisdom would lead  
28 us to at least consider as we start to think about that.

29  
30 GEORGE LEVENTHAL: Just to clarify, I don't mean to disagree with my colleague but I  
31 think Montgomery County has generally weighed in. And most counties do, in fact, weigh  
32 in I think it was somewhat unusual, the recent failure to weigh in because of a lack of  
33 interest in making waves by some of our friends. So, now, that there's more activity from  
34 hospitals, I think it's more urgent than ever that the county develop some sort of position.  
35 I don't think we want these large market actors to just be going about, you know, like  
36 elephants in the night bumping into each other. We, as a county ought to have some  
37 sense of what we think is in our broad interest. I know you agree with that but it isn't so  
38 that we generally don't weigh in. I think it's somewhat unusual that we did not.

39  
40 MICHAEL KNAPP: I guess exactly we don't weigh in but just-- in what role should we  
41 weigh in. Whereas the Commission kind of see is the place for us to best contribute, are



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1 we complimentary or should we be more assertive. I'd be curious to get the perspective of  
2 folks who think a lot more about health in that kind of a perspective than I do.

3  
4 WENDY FRIAR: I think it's a topic that the Commission would be interested in discussing.

5  
6 MICHAEL KNAPP: It was the annual report that you had submitted, there's a quote on the  
7 cover that says we put way too much emphasis on treating disease rather than protecting  
8 health in the first place. I would be inclined to agree, I was-- intrigued by that and I'm  
9 looking at the kind of the three areas you identified in your retreat. I didn't get a sense  
10 from that as to how much we are focusing on kind of that, a broader protecting and the  
11 prevention piece. And I guess if you just show the perspective a little bit, as the kind of  
12 work that I want the Commission to see it as a role and doing more of that.

13  
14 WENDY FRIAR: Yeah, think at this time we really are hoping with the committees that  
15 they have more of a reach into the community to see where the community is. What is  
16 going on in the community and what some of the needs are. We know that we're in budget  
17 crises, today I was just informed how the Minority Outreach and Technical Assistance  
18 Program lost its budget for restitution funding. And I haven't talked to them too much  
19 about it. I just heard part of the voice mail about it. So as we move forward, we're going to  
20 really be thinking of what the needs are and what the resources are. And as it was  
21 brought up, I think just in the previous presentation, Chronic Disease Management, you  
22 know, how can we prevent disease before it happens. There's lots of avoidable  
23 hospitalizations, morbidity and mortality that we can deal with. So through these  
24 committees, we hope that we'll be looking at how we can really meet and work with the  
25 needs or what the people are, have community forums, get information out and see what  
26 we can do, what we can support within the county. The Minority Health Initiatives, there  
27 are so many Boards, Commissions and Committees, what are they doing? How can we  
28 work together to have a stronger voice?

29  
30 MICHAEL KNAPP: Councilmember Trachtenberg?

31  
32 DUCHY TRACHTENBERG: And thank you, President Knapp. I wanted to provide a little  
33 bit of context for the conversation that we're having right now about focusing on  
34 prevention. And when I was at an event last night over at Suburban Hospital, a statistic  
35 which I brought up is the following, that in the last four years, an evaluation of Federal  
36 funding, again, remembering that so much of the Federal public health dollars, they end  
37 up in the state coffer and that's how we fund things clearly on the local level. Apparently,  
38 for every dollar that's spent on health care, only four cents on the dollar is spent for  
39 preventive services. So, that, you know, helps us realize that, you know, the funding really  
40 hasn't been provided either on a Federal or really quite frankly, a state level either. So,  
41 there's a lot of difference to make up obviously if we're really serious about putting the



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1 emphasis and I believe we would like to put on prevention because we know that that's  
2 money well spent. And in the long term, it's a real benefit to the community. You know, in  
3 terms of the hospital function, I, you know, have been following the conversation about  
4 hospitals and their expansion and our role in that. And I would share with colleagues that  
5 about three months ago, on my staff, we actually received some data sets through the  
6 Federal government for the state and specifically for the county. And right, now we're  
7 actually looking at the hospital utilization data sets, and so I would hope that by December  
8 11, George, that we would have a report generated through my staff. Again, through two  
9 epidemiologists, actually, who have just worked on a very limited contractual basis with  
10 my regular staff. And I've already seen some preliminary findings, and it's quite interesting  
11 how the hospital or the emergency room functions are being utilized, that I think some of  
12 the fine things are going to surprise us. So, I would agree with the Chair of the HHS  
13 Committee and certainly with the Council President as well, that the function of our  
14 hospitals and the collaboration, improving the collaboration between our partners, our  
15 hospital partners has to really be of primary interest to us, especially when we know that  
16 so very little money is really being provided to us around prevention.

17  
18 MICHAEL KNAPP: All right, thank you very much and I just to make one other  
19 observation, I should have said this with the last presentation, given the lack of the  
20 shortage of nursing which I think we're all aware of. At five o'clock today, I know there's an  
21 event at the University Of Shady Grove, a talk went through the expansion of the  
22 University of Maryland School of Nursing into the University of Shady Grove. So they're  
23 actually increasing the capacity to educate more nurses here in Montgomery County. And  
24 so, I think it's a very significant step forward, and so, I know that's been the advocacy of  
25 the Department and the Commission and everybody else. And so, I think everybody would  
26 progress, baby steps but progress nonetheless.

27  
28 WENDY FRIAR: Yes, it is. We need more nursing instructors to help with the capacity  
29 issues, so it's nice to hear that it's coming to Montgomery County.

30  
31 MICHAEL KNAPP: Well, thank you very much for your effort. Please extend our thanks to  
32 the rest of the Commission.

33  
34 WENDY FRIAR: Thank you all very much, thank you.

35  
36 MICHAEL KNAPP: Okay, we now turn back to our morning discussion on the TMX zone  
37 and then to the Twinbrook Sector Plan, right on time.

38  
39 JEFF ZYONTZ: You might think of this as a continuation of your public health interest.  
40 This is a police power health safety and welfare. Just for some continuity I guess.



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1 MICHAEL KNAPP: It is-- and just for the public health perspective, it's now 2:30, both,  
2 public and mental, many. In the words of one of our former colleagues, the brain can only  
3 absorb what the rear can endure. I think that we'll shoot to wrap up between four-thirty to  
4 five o'clock or probably four-thirty-- I've watched my colleagues over the past couple of  
5 years. I noticed we start to wane at about four-thirty. And so, given the subject let's just  
6 shoot to get as much as we can in the next two hours, if that's a logical break point. And  
7 we'll try to conclude then if we can get a little bit more and then we'll try, okay?

8  
9 JEFF ZYONTZ: I always try to avoid shooting myself but that's okay. When last we left we  
10 were at the criteria for height and density. I don't know if you want to go into the details of  
11 those or still go through major medical. And then people have comments or questions  
12 based on the Chairman's comments which are on the last two pages of your packet. They  
13 can forward them to me and we can deal with it when we want to take action.

14  
15 MICHAEL KNAPP: I think that as we get to specific topics and I'll will just write there-- I  
16 think it's like the Chair did before, just raise them, so, we don't kind of know where they  
17 are. Then people can look at them but I don't get into-- I know they were getting that level  
18 of specificity today, so, I think it's important that just people to note that where the issue is  
19 and then...

20  
21 JEFF ZYONTZ: You should note then the Chairman has a couple of suggested changes  
22 for those criteria. Again, his material is in the back. Going through my packet for today  
23 we've already talked about heights and maximums of heights, so I won't address that  
24 again. The committee did go through all of the standards in the zone and include the  
25 public use space requirement. There's a 20% public use space requirement in the optional  
26 method that's minimum public use. The committee did not recommend making any  
27 changes and forgot to note on the standard method that was 10% as a minimum as well.  
28 There are provisions that we'll get through for, well, which is the next item that would allow  
29 a payment in lieu of on-site provisions of public use space or public amenities. That  
30 should be relatively fresh in the Council's recollection for what we did in the central  
31 business district zones. It's modeled after those provisions, there's nothing much changed  
32 there, but it does a lot for some more flexibility.

33  
34 MICHAEL KNAPP: Councilmember Floreen has a comment at this point.

35  
36 NANCY FLOREEN: Yeah, I wanted to raise from my colleagues an issue, I think you  
37 might have gotten some communication from the public. I don't know if there is anything in  
38 the packet, but I wanted to propose and I did discuss this to no avail, but of course, very  
39 interested in collaborative numbers in the PHED committee. The issue of, you know, when  
40 we have a major new development in a transit station area, you've got a lot of neighbors  
41 who are in existing communities and who may have actually have public facilities in those





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1 communities that are currently and will continue to serve the new residents in new  
2 developments over time. And this is probably less true for Twinbrook, although, I will say I  
3 think the children in a residential community adjacent to Twinbrook go to elementary  
4 school in Garrett Park right now. But I don't know how school boundaries will be resolved  
5 as projects go forward, but I will note particularly in the White Flint sector plan, that area is  
6 immediately adjacent to Rock Creek Park. Rock Creek is basically the backyard, an  
7 outdoor natural environment for White Flint. And that's a community that's losing its rec  
8 center, the community neighborhood community center right this minute. Wouldn't it be  
9 nice if the developer came through and said, well, I can at least help with a little  
10 playground or something in that community. The people in my project, again, will be going  
11 over there anyways. And wouldn't that be a desirable amenity to permit a developer to  
12 support. Likewise, in the other side is Uncle Tom's cabin, really, a great historical resource  
13 for the county for which there is very little money. And wouldn't we want at least make  
14 available the opportunity for a developer in the sector plan to make a contribution to the  
15 advancement of that project and get some credit for it in the development process.  
16 Likewise, down in Garrett Park community which is besieged these days by developers of  
17 White Flint, all of whom are selling very high buildings and lot of density and a lot of  
18 change that they are going to, you know, going to live with should those projects go forth.  
19 They've offered to make some contributions to a community project but, again, they would  
20 like to get credit for it at the end of the day when they go before Mr. Hanson and friends.  
21 And so, I think that's at least an opportunity that we would want to encourage, not to  
22 suggest that this takes the place of any public amenities, public facilities obligation that is  
23 associated with any project. Now, they still to make their school payment and the  
24 transportation payment, they have to satisfy their green space, they have to do all these  
25 other things, anyway. But it seemed to me that it would be worthwhile to make available to  
26 a developer the chance to make at least some contribution to a neighborhood amenity  
27 that serves not only the adjacent community but also, potentially, the residents or users of  
28 the project that that party is going to make possible. We changed the rules basically for  
29 Bethesda in the past where you could contribute to an amenity fund so that we'd have  
30 functional, reasonable amenities within the communities that would get away from the  
31 random piece of art to serve a particular project with the hope that in the end, we would  
32 get some better projects or amenities for those communities. And I think with the kinds of  
33 changes we're talking about in the transit corridors, and ultimately up in Germantown, why  
34 not make available this opportunity or at least make it possible not to say it's definitive but  
35 to make possible some of these negotiations in the development process. It doesn't end or  
36 eliminate the other development obligations of any particular project, but it would allow  
37 frankly some positive community benefits possibly, that the residents don't always feel that  
38 they're going to see. So I've proposed some specific language to put in the hop run, we're  
39 not going to make decisions but I'm going to say...

40



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1 MICHAEL KNAPP: We're not going to do this but if you want to circulate that to colleagues  
2 for their consideration between now and the time we can come back to take action.

3  
4 NANCY FLOREEN: So, I wanted to just share this with everybody here, and everybody  
5 can have a copy. Basically, it would say that the planning, right now, one of the options in  
6 the legislation call and Jeff wants to jump up, it's coming around. Right now, it says that  
7 the Planning Board can collect amenity money to put in the fund, It can collect cash and I  
8 would simply propose language that said roughly and this is just a draft, it could authorize  
9 part of that payment for amenities that are located in the planning area adjacent to the  
10 transit station area if the amenities serve the public and contributing development within  
11 the sector plan boundaries. So, that's the item that I wanted to add to the mix and then we  
12 can come back to it later on.

13  
14 JEFF ZYONTZ: And if I just may for the Council's consideration, the focus of the  
15 committee and my focus certainly is the nexus between this fund and what this goes for.  
16 The more remote in space it is, the harder it is to prove that nexus. We would expect that  
17 most of the contributors to the off-site stuff would be commercial developments which  
18 would not be contributing residences to schools or other things further away. Certainly, I  
19 think the Planning Board's priorities have been the pedestrian access and making things  
20 better to move around within the area. So, I think for those reasons, the committee as a  
21 whole did not recommend this option.

22  
23 NANCY FLOREEN: And certainly not Mr. Zyontz.

24  
25 MICHAEL KNAPP: And Council member Elrich.

26  
27 MARC ELRICH: I think that's kind of the critical point is trying to make sure that we  
28 adequately serve areas that we're re-developing. And my concern, for example, in White  
29 Flint is that although there is a White Flint residential community and we're talking of  
30 putting what, 20,000 people into a new White Flint, there's no one to speak for them right  
31 now and that whatever happens, happens, they'll move in after these plans were done  
32 and at this moment, there's no one to say these are the amenities we need in the  
33 community. And I would be afraid of things being drawn off outside the White Flint  
34 community and I don't know how you would assure that everything was addressed  
35 internally that needs to be addressed. And then see if there is anything left over that you  
36 could justify bringing outside of White Flint. I was particularly concerned about the  
37 discussion around the stage in the school frankly because that really treats one school  
38 very differently than all other schools. You know, a park, and to me that's open to  
39 everybody, maybe somewhat different but I think it's a really slippery slope you get into  
40 when you start allowing things outside of the immediate area. And I can imagine where  
41 something is close enough and is clearly going to be used by everybody that it might well



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1 qualify. It's hard to picture there's going to be any lot of green space inside of what we are  
2 all are talking about, redeveloping inside a White Flint, maybe, there's something else. But  
3 it seems to me you've gotto have your priorities set up that everything within the planning  
4 area is taken care of first and that these projects don't compete and that they don't  
5 develop constituencies. That would be the other thing I wouldn't see is a bunch of people  
6 from outside the White Flint planning areas, besieging us for the benefit, you know, for  
7 what they think they can get from something inside White Flint. And then we're going to  
8 have to be deciding what's appropriate for the further development of the White Flint  
9 versus what are people are asking for I think they can from the developer for their project  
10 outside. So I just see problems with this.

11  
12 NANCY FLOREEN: Let me just say that that is what we anticipated for at least within  
13 Bethesda, and in the CBD. And that's a decision that would always be made on a case by  
14 case basis by the Planning Board in the process of reviewing the competing issues.  
15 Maybe a good idea or maybe bad.

16  
17 MICHAEL KNAPP: Councilmember Leventhal?

18  
19 GEORGE LEVENTHAL: Is this the issue? I met the PTA president from Garrett Park  
20 Elementary School, is this what she wants? Is this the issue?

21  
22 NANCY FLOREEN: How do you know it isn't? I don't know.

23  
24 GEORGE LEVENTHAL: I mean this language is pretty general. Do you envision that  
25 developer contributions would build classrooms and labs and definitely...

26  
27 NANCY FLOREEN: No, no, no, no, no.

28  
29 GEORGE LEVENTHAL: Okay, I mean I understand the issue if development significantly  
30 affects enrollment at a school then you need some help with the facilities. I guess I got  
31 that, I know we have an impact thing. You know, we have to think through two issues, I  
32 mean, first of all I guess I going to sound like Royce now, you know, we haven't even  
33 created the zone and already we're offering ZTAs that are somewhat project specific, you  
34 know. But secondly, fortunate is the school then that will be located to an area adjacent to  
35 an area of intense development. I guess this is Mr. Elrich's point. So, that if your school is  
36 located out in the ag reserve, you know, in Poolesville or in Aspen Hill or somewhere  
37 there's not a lot of intense development right now. And you don't get the goodies, that  
38 there's an equity issue there.

39 MICHAEL KNAPP: As you respond Mr. Hanson and anybody from the staff, I also wanted  
40 to-- I agree with the point that Councilmember Elrich has raised. But also, and I didn't fully  
41 appreciate this till we did the budget this past year, there was a community center that



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1 was agreed upon as an amenity in Friendship Heights that kind of had pretty long tail that  
2 required us to actually provide staffing, operational expenses and all those things that was  
3 an amenity that was approved by the Planning Board. And I guess one of the questions I  
4 would have in with what we approved from the committee, how would county government  
5 get kind of consulted on that so we don't end up with a series of potential amenities that  
6 may sound great but don't necessarily fit within the context of anything that we're doing  
7 budgetarily, and so just look at how that fits as well.

8  
9 GEORGE LEVENTHAL: Park and Planning raised that very issue with us last week at our  
10 meeting, they said we'd get these donations of land, but they can't afford to maintain it and  
11 we'll cut the grass.

12  
13 MICHAEL KNAPP: Right, and so in addition to that, just responding in general within,  
14 where would, how would be the decision be made relative to the rest of Montgomery?

15  
16 ROYCE HANSON: Yeah, all right, let me talk generally first and then I'll try to come back  
17 to this. I think the point to remember is the public use space and amenities space that's  
18 required of a project is principally there to serve the needs of that project and to account  
19 for the effect of that project on its immediate surroundings. Therefore, the in lieu payment  
20 is justified basically only if the space and amenities cannot be provided on site. That you  
21 don't get as good a project and you don't get as good a space as you would if you allow  
22 the contribution to be made to some designated space off-site. The way the ordinance is  
23 written when we do take an lieu payment it is supposed to be for a specific place. And  
24 again the idea is that the place is in the planning area and is therefore connected to the  
25 development that is being approved. So, first of all, the in lieu payment is an exception to  
26 the rule in the first place. The master plans that you have; Twinbrook is a modest example  
27 of it. I expect both Germantown and White Flint will be more robust examples of  
28 identifying, for instance, public parkland or other major public facilities that are within that  
29 planning area and for which it might be appropriate. The other thing, generally, that the in  
30 lieu payment is not designed to do, it is not designed to substitute for CIP projects that we  
31 would normally be funding with public funds because they serve either the broader area or  
32 a particular function in that area. We might very well, and as a routine part of the  
33 development process, we do take dedications of land. For example, we did take a  
34 dedication a land for an elementary schools. If we could justify up in the project, that it's  
35 big enough, we might take it for a police substation or something of that nature but it  
36 would have to be a fairly big project, a really big project to justify that kind of an exaction.  
37 But it might fit, for instance, within the overall project and could be used in that sense. So I  
38 think that, you know, I'd like to have the Board take a look at this in particular as we're  
39 working on these other plans to see what our considered and reflected judgment on it  
40 might be but I think we would find it problematic to do it this way. When you talk-- also  
41 remember that there may be a mitigation payment in addition to the impact tax,



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1 particularly with respect to schools. And they were also dealing with a changing target  
2 because as the population in the planning area, for instance, in a transit station area  
3 increases the school age population in the adjacent area may be declining, it may be  
4 increasing. It's really a little difficult to figure out.

5  
6 MICHAEL KNAPP: Councilmember Berliner?

7  
8 ROGER BERLINER: Perhaps last comments on this since it will something we'll take up  
9 later and wait to hear from Dr. Hanson and his colleagues with respect to- but it did not  
10 take long for this proposal to find its way into the e-mail chatter in district one. Such that  
11 there may be particular communities like your former community that you serve so well  
12 that feel like this would be a positive development but I promise you there were at least  
13 five that stood up immediately within White Flint sector itself and said, "I'm sorry we need  
14 every one of these public amenity dollars and the effort is right here because the impact  
15 on our community is going to be humongous. "So, the notion of allowing these dollars to  
16 escape if you will in White Flint when we're going to need every penny to make sure that  
17 the neighboring communities in particular are not adversely affected. This is going to be a  
18 very difficult sell, not because there aren't other communities or other projects that are  
19 worthy of our support but it's going to be a tough sell in the White Flint sector I believe to  
20 justify taking the dollars out.

21  
22 MICHAEL KNAPP: And we'll come back to this next and back to this, come back to the  
23 ZTA, it's a potential amendment. And so any additional information which you...

24  
25 ROYCE HANSON: Yeah, I'll ask our staff on board to give you a considered judgment on  
26 it rather my offer on the fly.

27  
28 JEFF ZYONTZ: Now comes the most novel aspect of optional method development which  
29 is the building lot termination program, often sometimes referred to as BLTs. We don't  
30 mean it as sandwiches, it's building, lot, termination. And of course its effort is to reduce  
31 the number of buildings in RDT land. This would be the county's first zone that had this  
32 requirement; it was a recommendation from the task force on agricultural policy last year. I  
33 didn't the full name but I'm sure-- and by the way I thank Marlene for being able to steal  
34 her material from a memo that she wrote to the committee on this subject. The first thing  
35 to say that I think the Council got the most eloquent explanation of the nexus between  
36 development in metro station areas and development in the ag community by the  
37 Chairman at your last semi-annual report just last week. And as ineptly as I could try to  
38 reduce that to some writing in this to say that development either residential or  
39 commercial creates demands for more development generally within the county.  
40 Residential development creates the need for jobs and more places to work those jobs  
41 require people to live somewhere as well there's greater demands in the excerpts as well



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1 as those centralized areas. Commercial development itself developed is a demand for  
2 housing directly, 60% of the people who work in the county live in the county, a portion of  
3 those would be looking for things in the rural area. This helps reduce that demand in the  
4 RDT zone. It's important to get that initial nexus out again just from my background and  
5 again from the Supreme Court who has told us to look for these sorts of things and that  
6 we must have them. There are a number of mechanics in this program and although  
7 proven. Number one, as recommended by the committee and the Planning Board it  
8 excludes housing development that is required to provide workforce housing. So, the  
9 translation of that is if it's over 40 units per acre and in the metro station area and its  
10 producing housing then it's not required to also buy BLT. Number two it only applies to  
11 12.5% of the amount of development above the standard method. That's a mouthful but  
12 what's-- put some numbers on. The standard method recommended by the committee in  
13 the Planning Board was 0.5 FAR. So, if you have a 1.5 FAR building you have an  
14 obligation on one FAR. How much of that one FAR do you have to then purchase for?  
15 Twelve and a half percent of that one FAR. Now, of that number of the 12.5% you have to  
16 equate how much space equals one BLT. And there are different equations, thank to Park  
17 and Planning staff. Non-residential development is equal, every 7,500 square feet of gross  
18 floor area is equal to one BLT. For residential one BLT equals 9,000 square feet of gross  
19 floor area. There are background memos within this report that detailed how those  
20 numbers were derived. Essentially, 12.5% number right away was derived really out  
21 looking at MPD refunds. They said, "Okay, when we had an MPD we always said we're  
22 only going to impose it on, we're going to make it 12.5% for whatever magic exist in that  
23 number, we're not going to change that." The result of all the numbers including the price  
24 of the BLT is what's really important to the development community. So, when you go  
25 through what's the price of the BLT, which by the ZTA would be determined by executive  
26 on an annual basis. And what proportion of your development you're going to do, what  
27 does it cost you per thousand square foot of space. If you take the highest numbers that  
28 that's been thrown around the table, \$400,000 dollars were for a BLT. And a non-  
29 residential project which pays the most per square foot, it would cost you \$6,667 for every  
30 thousand square feet above the standard method density. So, again that gives you some  
31 idea of what's going on. We recognized that cost they are pro forma as well in the  
32 background that deal with what percentage of that cost is of total development, what  
33 percentage of that is of other obligations. You can review that material as well.  
34 Recognizing that this was being imposed as a cost, the committee looked at other things  
35 that would reduce cost. One of them was reducing parking and we'll go into the detail of  
36 that in a little bit. And the other was making the project plan itself an option for the  
37 developer if the development had to also get subdivision approval. That is exactly what  
38 the Council approved with the Wheaton overlay zone. And that was what's recommended  
39 here, again, of easing the burden kind of thing. Certainly in economic terms the ease of  
40 the burden for the development community is most significant in the reduction in parking.  
41 There are a number of reductions in parking but again if you took a non-residential



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1 building and assuming you were getting a break of 0.3 parking spaces per thousand  
2 square feet you would reduce your cost for parking by \$12,000 for every one thousand  
3 square feet of space. So, again by regulation we can reduce the amount of parking. I  
4 know that was a lot of numbers to go through, that was a lot of rationale to go through but  
5 from here we're opened for a little bit of questioning.

6  
7 MICHAEL KNAPP: Okay, Mr. Leventhal has to leave and I just a couple of points I want to  
8 make but in deference to them that leave, that's what I-- before we get there I just wanted  
9 to thank him for-- under his presidency the ad-hoc and agriculture committee actually  
10 came forth with this recommendations. And this is, we'll continue to focus on this over the  
11 last two plus years and this probably the most significant piece that's new and novel and I  
12 appreciate his efforts to get us this point. Everyone else has efforts to do that but I think  
13 once we do this we can then begin to move forward on a number of other issues that are  
14 occurring in that agreed recommendations.

15  
16 GEORGE LEVENTHAL: Well, thank you, Mr. President, I know this is a great interest for  
17 obvious reasons. It primarily affects your district and you've paid very close attention to  
18 this issue as have I and I regret I have to be in two places at the same time. This is-- I'm  
19 intensely interested in this discussion, but I have a three o'clock meeting that I don't  
20 believe I can postpone. So, I just want to offer a quick thought and then ask a question.  
21 So, it seems that the information in the packet actually is enormously helpful and  
22 addresses some of the questions that I asked last week about this topic when we were  
23 meeting in Cabin John. So, it is possible that purchasing all BLTs could cost as much as  
24 \$700,000,000 according to the information that Marlene and Jeff have compiled, which is  
25 staggering. And so, neither the BLTs that are purchased in the next decade in White Flint,  
26 nor Twinbrook nor the use of ALARF funds which I'm still looking forward, maybe, you've  
27 already delivered it to my office but I'm seeing that Marlene, to see the AG's opinion which  
28 indicates that we can use ALARF funds for this purpose. Even all of those things  
29 combined would not extinguish every last TDR. Now, having said that and that's my  
30 observation. So, here's my question. My question is, do we have a mechanism or can we  
31 develop a mechanism that acquires BLTs in order of urgency. That is, here's my thought,  
32 okay, there are-- I can of one and I know there's not just one but one comes immediately  
33 to mind. Land owners in the ag reserve who are very proud of the fact that they will never  
34 allow subdivision of their parcels. Some of them are very large land owners and it seems  
35 to me not, I mean with all due respect to, you know, great Montgomery county citizens  
36 who are preserving the ag reserve, you know, paying such land owners who, it's all very  
37 clear have no plans whatsoever to subdivide hundreds of millions of dollars is probably  
38 not in the public interest. And so, do we have some sense of what the most sensitive  
39 BLTs are to buy. I'm very glad to see these numbers because I had wanted, I've been  
40 wanting to see them for some time and they have been out there for some time, but now  
41 they're in front of my eyes, which is that there is an estimate of approximately 1400 to



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1 1750 BLTs and the assumed worth, which I understand the calculations, that you take the  
2 value of the land minus the agricultural value land, that's all very clear to me and  
3 enormously interesting. But how do we rank those? How do we make sure that we're  
4 buying the BLTs we need to buy and not frankly just enriching people who have no intent  
5 to subdivide.

6  
7 MARLENE MICHAELSON: You're going to be seeing that as part of the executive  
8 regulations which are going to establish priorities for BLT. And as soon as you're going to  
9 be turning to some legislation that I think is going to come before the council that provides  
10 enabling basis for the BLT program, and then directly after that, the executive will be  
11 submitting regulations and that will probably be the primary issue you focus on is, how will  
12 you make selections among different applications for the BLT.

13  
14 GEORGE LEVENTHAL: Yeah.

15  
16 MARLENE MICHAELSON: And so, I think in your initial versions of the executive  
17 regulation, the date of receipt of the application and the size of the property were the  
18 priorities, which would have led to exactly what you feared...

19  
20 GEORGE LEVENTHAL: Right.

21  
22 MARLENE MICHAELSON: ...having someone come in the first day and possibly use all  
23 the dollars. And so, that's something that I know the Executive Branches were thinking  
24 and will be before you so we can look at that issue and others like it.

25  
26 GEORGE LEVENTHAL: Excellent.

27  
28 ROYCE HANSON: I think that your question is right on point. And as Marlene said, we're  
29 expecting those regulations to be rethought so that the imminence of development is an  
30 important criterion. And the point that you made is really a very good one. There are many  
31 landowners in the reserve, and under circumstances, know how, no way, no time we want  
32 to subdivide their land.

33  
34 GEORGE LEVENTHAL: Exactly.

35  
36 ROYCE HANSON: So, the total number of building lots that need to be terminated is we  
37 don't know exactly how many but it's smaller than the gross figures would represent. The  
38 other thing is that in terms of the funding of the program, it isn't necessary to have all of  
39 the funds available at one time. Basically, we have been seeing relatively few lots per year  
40 come in. Some of these are perfectly reasonable lots to go ahead and allow to have a  
41 house built on them. Others are clearly subdivisions that have absolutely no relationship





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1 to agricultural use, but that's relatively few. The other point that I would make is that the  
2 \$400,000 is really a top imaginable figure. We do have a better figure sense of this, these  
3 values than we had when some of this work was being initially done.

4  
5 GEORGE LEVENTHAL: But-- and I think we're finding those. That's for sure.

6  
7 ROYCE HANSON: Because we just bought some land in the agricultural reserve under  
8 the Legacy Open Space Program that had been subdivided. And \$400,000 was the most  
9 repaid for the fee for 25 acres.

10  
11 GEORGE LEVENTHAL: Well, that's precisely why I, as you know, I'm very interested in  
12 seeing us move ahead with the ALARF now when values are down. I mean, there would  
13 be-- it's an opportune time to accumulate as many of these things as we can with the  
14 money that we're sitting on right now whereas, you know, if we move in this direction with  
15 the TOMX zone, the TMX zone for White Flint and Twinbrook, it's years out, I mean it's in  
16 the distant future, so... And I apologize, I'm going to take this other meeting but I will watch  
17 this meeting.

18  
19 MICHAEL KNAPP: No, thank you. It's a good point. We actually had our conversations  
20 committee and we will come back and have further conversation for the council to address  
21 exactly that point. Thank you for the overview, Jeff, because I think it kind of lays out the  
22 pieces. We, obviously, we have the discussion committee and we've had subsequent  
23 follow-up, and I think even in the letters that have sent to us over the course of the last  
24 few days, folks are concerned as to what is the increased burden that purchasing BLTs  
25 will have on the impact of allowing development to go forward and this is kind of the  
26 tipping point where the straw that breaks the camel's back and wouldn't allow it to go  
27 forward. And we had some analysis done in the committee's packet for considerations to  
28 get some sense as to what the impact would be and I would ask Marlene to walk us  
29 through that. But even in spite of that, I think there are people who will say why 12.5%?  
30 And Jeff kind of talked to us to why 12.5% Could it be 10? Could it be 15? Could it be 5?  
31 Could it be 20? Probably could be all over the place. I think that will be a point that we  
32 need to discuss. And the question is, certainly, any number can be less, any number can  
33 be more, it's a matter of what we want to try to achieve from policy perspective and I think  
34 to understand the impact on the potential projects that are out there, and so I think it will  
35 be helpful to walk through some of that. Further down, we see if Mr. Berliner has a  
36 question that he wants to raise.

37  
38 ROGER BERLINER: Well, just some of the same point and thank you for raising it  
39 because I have had conversations with the Chairman with respect to this 12.5% And quite  
40 frankly, I think it's conceded the 12.5% was, you know, a fairly arbitrary number. It has a  
41 relationship to MPDUs.. I understand...



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1  
2 MICHAEL KNAPP: We never say the word arbitrary.

3  
4 ROGER BERLINER: Oh, not sir. So, I'm sorry. There was a...

5  
6 MICHAEL KNAPP: We say nothing.

7  
8 ROGER BERLINER: Nothing, and certainly nothing arbitrarily and capricious.

9  
10 ROYCE HANSON: It was a thoroughly considered number.

11  
12 ROGER BERLINER: It was a thoroughly considered number. And I do think it's important  
13 that we establish this program. I've become convinced that there's enough of a nexus, but  
14 I am also concerned as to the total impact on the development community. I'm concerned  
15 not about the development community. When we get to White Flint, I am hoping that when  
16 we get the master plan from White Flint, from Park and Planning, that this is something  
17 that excites the community; that we can go forward with. And that from my perspective,  
18 the sooner it happens, the better because I think we're going to be improving that  
19 community. And so, to the extent to which we impose exactions that postpone that time, I  
20 don't consider that to be a positive. On the other hand, I do consider this to be an  
21 important step forward. And so, the Chairman and I have discussed the possibility of  
22 moving from 12.5% down to possibly 10%. It's not a significant shift, but it's a modest shift.  
23 And quite frankly, I do perceive this to be a somewhat lower priority than MPDUs for  
24 examples, so if one were to rank order, all the different things that we are asking the  
25 development community to do. I would say this falls, it's important but probably less than  
26 what I expect of that community when it comes to moderately-priced housing because I  
27 think the nexus is even stronger with respect to moderately-priced housing than I do with  
28 respect to the desires that we have here to protect the agricultural reserves. So, I will be  
29 offering to my colleagues the option of reducing this 12.5% down to 10% so that we move  
30 forward it. We don't have to have all the dollars immediately to the extent to which we  
31 have ALARF dollars and to the extent to which these units end up costing more than we  
32 project. The staff and I, and I'm sure others have had conversations as to the nature of the  
33 development that is taking place in the agricultural reserve. What kind of houses are going  
34 up there and whether or not we perceive those houses to be inconsistent with the  
35 fundamental purpose of that zone. Because quite frankly, if we are having mansions built  
36 out there in our agricultural reserve, we need to ask ourselves whether or not this is  
37 consistent with the purpose for which that zone was created and whether or not we  
38 shouldn't insist that to the extent to which the farming community wants to build a home  
39 for itself in the farming community, that it be a farm house, not a mansion with tennis  
40 courts and swimming pools. And that that is something that we may need to look at if the  
41 values end up being at the mansion stage as opposed to the farm community level. So, I



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1 just think there are number of ways that we could ultimately look at the price of a BLT that  
2 would keep it at the lower end as opposed to the higher and if we perceive that that to be  
3 a major issue as well. So, anyway, I apologize. Those are some of the thoughts that I  
4 have.

5  
6 ROYCE HANSON: There are, I think, when you look at those kind of issue, Jeff has  
7 already raised the point of offsetting issues such as the reduction of parking, which has  
8 more of effect than the BLT does on the basic economics of the development. So, the  
9 reduction in parking requirement because of the location in the transit area is an offsetting  
10 element to be considered. So, I think you want to look at the whole picture. The other  
11 thing that is important to remember, I think, about this and that is that the Building Lot  
12 Termination Program has really been the linchpin for all of the other things that all the  
13 other issues that are raised in the working groups report so it facilitates dealing with other  
14 issues that are far more meddlesome without it, it's not that they're free of meddles, but  
15 there were a lot more in dealing with the sand mound issue and how extensively it should  
16 be applied and in dealing with child lot issues and whether or not there should be further  
17 limitations on child lots. Those can be handled much more easily in the context of an  
18 effective BLT program than they can without it.

19  
20 JEFF ZYONTZ: And the one thing I'll say to the council is the draft that you have before  
21 you is consistent with the text of the farm bill or the ag preservation...

22  
23 ROGER BERLINER: Farm bill, yes.

24  
25 JEFF ZYONTZ: Well, Chapter 2B in my terms. With that legislation in its definitional  
26 aspects, if you change that, we should change this. We need to keep these two pieces  
27 consistent.

28  
29 MICHAEL KNAPP: Right. Okay.

30  
31 MARLENE MICHAELSON: I'm going to go through some of the numbers just quickly. First  
32 of all, in circle 39 of the packet, you have some of the estimates of the cost to BLTs. And  
33 as Councilmember Leventhal noted, the range that the Planning Department came up  
34 with was somewhere between 1400 to 1750 BLTs, and recognizing that not everyone will  
35 sell it's probably significantly less than that. But even if you assume 400 BLTs on top of  
36 circle 39, you can see that purchasing 700 BLTs would cost somewhere between \$140 to  
37 \$280 Million. So, we're talking about a very large amount of money. And we asked the  
38 planning staff to estimate if we purchase BLTs at 12.5% for all of the upcoming corridor  
39 plans for Twinbrook, White Flint, Germantown, Gaithersburg West, what they thought the  
40 total number would be generated, because these really are big opportunities for additional  
41 development and their estimate was somewhere between 200 and 250 BLTs. So, with the



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1 existing master plans, we're talking about still sort of a small potential. Now, that maybe  
2 fine for now given that, as indicated, development is not happening that rapidly in the  
3 agricultural reserve but I think that was one of the things that convinced the committee  
4 that the solution that was being proposed was not going to deal with the whole problem, it  
5 was going to be just addressing a piece of it and we would continue the need to work to  
6 find other places to either get BLTs or other sources of funding.

7  
8 ROGER BERLINER: Can I ask a question at this point? MICHAEL KNAPP:  
9 Councilmember Berliner?

10  
11 ROGER BERLINER: Can we stay with that point? The Chairman also indicated in his view  
12 and we've had different numbers, we had 900, we had 1700. My understanding from the  
13 Chairman's observations with respect to how many landowners were likely to go forward  
14 was that that made it a subset of the 900, okay? And that's the Chairman's, and the  
15 Chairman is not...

16  
17 MARLENE MICHAELSON: And I think that's why, too, I gave you a range here. So let's  
18 say you assumed that they're really only 900 out there and you further assume that our  
19 goal is not going to ever be to purchase every single one, but let's say it's about half. So,  
20 you can see if you want to purchase 420 BLTs, that's still a price range of somewhere  
21 from \$84 Million to \$168 Million. So, you know, even at the very smallest percentage it still  
22 is a lot of money.

23  
24 MICHAEL KNAPP: And I think it's also important to get to address the scale issue, too,  
25 that if you look at all the properties out there, probably only half to 2/3 or probably either  
26 percable or have, you know, I don't know if it's willing to do something with them. And so,  
27 if we can actually get a quarter of-- a third of the county's land area preserved, that's not  
28 insignificant. So, I mean, 250 doesn't seem like a big number. But when you remember  
29 the scale of the ag reserve, a quarter of it, you make sure that you protect a quarter of that  
30 in perpetuity in addition to whatever we're doing, whenever there's other easements,  
31 whatever we do, there lurks another potential farming sources is a big, big step forward.  
32 So I think it's important to keep this scale.

33  
34 ROGER BERLINER: No, and Council President, no one needs to convince me of the  
35 importance of not having an agricultural reserve turn into suburbia. So, this is very  
36 important and it does-- it only takes a few homes to ruin an area, so this is critically  
37 important. I was more speaking to the pace, how much in the order of magnitude in order  
38 to judge whether or not we make some modest suggestions in terms of how much we can  
39 obtain over what period of time.



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1 MARLENE MICHAELSON: I think you will have to distinguish between the pace and the  
2 zoning because, in theory, we're going to put the zoning down and that's going to be there  
3 if we make the right decisions for a very long time.

4  
5 ROGER BERLINER: The right decisions, I like that.

6  
7 MARLENE MICHAELSON: Correct. I mean, assuming that you decide in the future that  
8 the TMX zone is working, it's going to be there. And whenever the development occurs,  
9 it's going to lead to the purchase of BLTs, that clearly won't happen, you know, in the next  
10 six months. It may not happen in the next six years and it may take longer than that, but in  
11 a long term, it will provide that mechanism. But once you put the zoning in place, if you  
12 haven't captured this opportunity, it's going to be very difficult to go back and revisit it. So,  
13 I think this is the critical time for the decision...

14  
15 ROGER BERLINER: Right.

16  
17 MARLENE MICHAELSON: ...even if the results take a long time to achieve.

18  
19 ROGER BERLINER: And I think because it's a critical time for the decision more than the  
20 absolute number, I would air on the side of having a slightly less aggressive number in  
21 order to make it less painful and to have it, the precedent establish that, so that we can  
22 the other things that are necessary in the agricultural reserve. Because as you observe,  
23 this is the predicate for so many other decisions to be made that will have an impact there  
24 as well. And so, if we establish this and are overly aggressive in doing so, I think it's the  
25 best of both worlds.

26  
27 MARLENE MICHAELSON: Let me also turn your attention to circle 53, which was an  
28 analysis done by Planning Staff, looking at the rate of returns with and without BLT  
29 program. And the two lines I want to draw your attention to on circle 53 is a second line  
30 which is here's what development costs with our existing development taxes, mitigation  
31 costs, optional amenities. And then the very last line which looks at what the cost or the  
32 returns would be if you added BLT. And if you, you know, look at across the chart, if you  
33 look at all market units, the rate of return goes down from 6.03, that basically five, almost  
34 six, so a very, very small change. Or look across to even the differences in the rate of  
35 return under the column on the right with all of our costs imposed, workforce housing,  
36 constant units, sort of the worst case scenario, I guess a 5.38 without BLT, 5.34 with BLT.  
37 And the point that I wanted to make is that if you have a good project, those types of  
38 differences in rate of returns are not going to make a difference as to whether someone  
39 moves ahead with the project. It's going to be things like market cost and other cost that  
40 are going to determine whether a project moves ahead. If you have what is truly a  
41 marginal project right on the border and any little thing could tip it over, then yes, the BLT



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1 may impact it. But I think the council's decision needs to focus on long-term policy  
2 objectives and not what you're doing in a very short-term marketplace where development  
3 decisions are made everyday because virtually every single land use and zoning decision  
4 you make changes the viability of a project one way or the other, and I don't think it's right  
5 for us to be studying whether projects on the market are swayed. You want to make sure  
6 that over the long term you're achieving the development that you hope for an area. And  
7 so, if these numbers showed that the BLT program were taking really good projects and  
8 lowering the rate of returns so significantly that you'd never get the development you've  
9 hoped for, then I think that's a problem. But where it's at, on the margin like this, to me,  
10 the right call was to go for what you think is legitimate policy here which would be the  
11 support of the BLT program. And just to re-emphasize the point that Jeff made in his  
12 memo about the parking, under the most conservative estimate, the reduction in parking  
13 recommended by the PHED Committee will result in a savings of twice the cost of BLT  
14 and is perhaps as much as eight times the cost of BLT, depending on whether the project  
15 is commercial or commercial and residential, and depending on what you assumed the  
16 cost of the BLT is. So, to the extent that we can lower the cost of projects in ways that  
17 don't impact the policies we're trying to achieve, to me, it would preferable to lower the  
18 cost of parking or any other cost that we don't think are yielding benefits and keep the BLT  
19 as strong as we can to try and do as much preservation as we can.

20  
21 MICHAEL KNAPP: Councilmember Berliner?

22  
23 ROGER BERLINER: Stay with page 53, circle 53 and let me ask the Chairman a question  
24 with respect to it because...

25  
26 ROYCE HANSON: I may defer to Jacob. Go ahead.

27  
28 ROGER BERLINER: I appreciate the significance of this analysis. My question is, White  
29 Flint-centric here. In White Flint, we are going to have to have an incredible transportation  
30 infrastructure financing play here. That's not, I don't know if that's included in your analysis  
31 as to what that impact would have with respect to profitability. I don't know if the Chairman  
32 has views with respect to what that impact would be but from my perspective, again, that's  
33 going to be a big chunk of change coming from some place that I...

34  
35 ROYCE HANSON: It may not surprise you that I do have views on that. But Jacob Sesker  
36 has just done an analysis which will be before the Board this Thursday, dealing with some  
37 of these issues is really, I think, very illuminating. And maybe if Jacob just took a moment  
38 to talk to you a little bit about what his analysis reveals, I think there's going to be plenty of  
39 opportunity to produce the kind of infrastructure necessary to support the kind of  
40 development that we're talking about and still leaves room for dealing with the BLT issues.  
41 So, Jacob?



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1  
2 JACOB SESKER: Thank you. Certainly, Twinbrook and White Flint present very different  
3 opportunities and challenges for both Planning Board and Council and certainly there are  
4 very different sets of public benefits that are involved in both of those master plans. I think  
5 that in the Twinbrook area, you have, for sure, the impact of the BLT program may be less  
6 and the stakes are also lower. I think that the stakes for redevelopment for the county, in  
7 White Flint, are higher. And therefore, I think it merits perhaps more careful consideration  
8 of ways that we can balance out the impact albeit small of the BLT program so as not to  
9 make sure that we're jeopardizing the viability of a very key redevelopment plan for the  
10 future of this county. But by and large, our analysis has, you know, over time, we've  
11 looked at this issue in a number of different settings and a number of different points of  
12 time, the ZTA changes, you know, every couple of weeks. But in essence, if you were to  
13 take the proposal as it stands today, most commercial development, say an office building  
14 over a ground floor retail would pay roughly between \$2.90 a square foot and \$3.65 a  
15 square foot on top development costs for the BLT program. So, on a project where the  
16 development cost or something like between \$250 and \$280 Million range, \$2.50 to \$3  
17 doesn't seem like it's maybe that much. In some master plan, and as you allude to in  
18 White Flint, there are \$320 Million of transportation infrastructure, some of which is  
19 already funded and committed. So, certainly, there are issues there that are more  
20 complex than there are here because the cost for some of that onsite transportation  
21 infrastructure and for some of mitigation are over and above what were calculated into this  
22 equation here. But ultimately, it is the-- so I think those are very different situations and  
23 we'll say okay, well, does \$2.50, the \$2.90 make a lot of difference in Twinbrook? Maybe  
24 not as much. Does it make a lot of difference in White Flint? Maybe more. And so, then,  
25 we start to have beg the question, okay, are there things that also cost \$2.50 or \$2.90 that  
26 we can or we can reduce that burden on development in White Flint? And I think that  
27 there are ways that we can do that and we're exploring a lot of those different ways and  
28 we've been working with their private sector partners to identify some of those ways and I  
29 think that some of those might be appropriate for discussion along with the White Flint  
30 sector plan, some of those might be appropriate for discussion now.

31  
32 ROGER BERLINER: Well, it is now, since we're here, yeah. Let's do the now part of it.

33  
34 JACOB SESKER: Okay. Well, one of the things that we're looking at in White Flint is  
35 possibly forgiving the development impact taxes on commercial development to the extent  
36 that they're now already credited through the mitigation process and we're placing that  
37 with a special assessment on commercial uses. We've already proposed eliminating the  
38 BLT requirement for residential projects in places where the workforce housing  
39 requirement wise. Certainly, I think that the workforce, when you look at the residential  
40 component, workforce housing in MPDU, MPDU in particular, are where the really big hits  
41 take place. So, finding a way to reduce the burden on residential development is an



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1 important part of this process. There maybe other places and I think that Jeff has hit on  
2 some very good ideas with respect to reducing the parking requirements to the extent that  
3 that adds to the viability of residential projects, that's a huge benefit.

4  
5 MARLENE MICHAELSON: And my understanding, although we haven't obviously seen  
6 anything with White Flint yet, but is that it will be a real focus of residential development.  
7 And so, those parts of it would not be subject to the BLT. In some other area where the  
8 focus would be commercial, it maybe more of an impact if it were exclusively or  
9 predominantly commercial, but I don't think that's what I've heard from the staff that that's  
10 their vision for White Flint.

11  
12 ROGER BERLINER: I guess my instinct for what it's worth is that I come out of this  
13 conversation more convinced rather than less convinced that a slight adjustment in a  
14 12.5% is appropriate because it is now that we are establishing that fee across the board.  
15 And your proposals with respect to what could come in the White Flint sector plan may or  
16 may not be acceptable as a matter of public policy and other issues. I just think we want to  
17 be careful in opening in this opening round with respect of the dollars because I do see  
18 the impact is having a very different effect in the two areas.

19  
20 JACOB SESKER: If I could, I would say I think that ultimately, to the developers, what  
21 matters is the bottom line. And so, I think the 12.5%...

22  
23 ROGER BERLINER: What if we got the 12.5% here...

24  
25 JACOB SESKER: It could be 12.5% or it could be 100%, the difference is 12.5% times  
26 what? And so, assuming that we're to keep the standard methods split, standard method  
27 optional methods split the same, then the "what" becomes the price. And if you feel like  
28 you need to nail down the price so that you can feel comfortable knowing that the  
29 percentage that you're applying is we can reverse engineer from a price that is acceptable  
30 to a percentage to apply, then that's something that would need to be done at the Council  
31 level rather than at the Executive level.

32  
33 ROGER BERLINER: My understanding is that we can't do, and we had this conversation  
34 the other day, my understanding is that the formula, if you will, that the County Executive  
35 is using is only a formula designed to mimic what the market price is and unless we are...

36  
37 MARLENE MICHAELSON: Well, actually we haven't seen that yet. That's also going to be  
38 a part of the executive regulations. So, you know, one option is that you keep the 12.5%  
39 but in the executive regulation, you look at how they're going to calculate the price. The  
40 advantage of going that route is it's a lot easier to change executive regulation. And I think  
41 the proposal is to reevaluate every year the pricing mechanism so that could be your





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1 venue of monitoring it and making sure that the price is not too great. There's nothing that  
2 says that what you will pay for BLT has to be 100% of the...

3  
4 ROGER BERLINER: Of the market value.

5  
6 MARLENE MICHAELSON: ...estimated market value. It is entirely possible to say you're  
7 going to have a BLT program that purchases 80% of the market value because we think  
8 that will be enough to entice property owners.

9  
10 ROGER BERLINER: If wanted to, for purposes of this conversation, we could assume the  
11 200,000 the low end of...

12  
13 MARLENE MICHAELSON: Absolutely.

14  
15 ROGER BERLINER: ...the market value which we are currently experiencing and lock that  
16 in for now and adjust it as we deemed appropriate over time but to-- I do think it's going to  
17 be important, I don't know with my colleagues, but I do think it's going to be important that  
18 we know if we're approving this, I think it's important we know what are we talking about,  
19 what are the dollars and I'd like more parameters about around that then we currently  
20 have in...

21  
22 MICHAEL KNAPP: I was going to propose because I've had a couple of conversation with  
23 folks who said that, obviously, ten or five or some other number is less than twelve and a  
24 half. I agree. But it's still a percentage and even with the number, with the calculation  
25 that's done here on circle 53, putting on a lot of percentage on the margin, and we don't  
26 have a good sense of how that applies. My expectation is, if people making  
27 recommendations to us in a lower number that somebody has done at least some initial  
28 pro formas to have some sense to what that 12.5% could have an impact, could impact  
29 given some of the projects and where they are on the process in White Flint, so we can  
30 actually get some folks that are out there who have concerns. We can actually see what  
31 kind of numbers were compromised.

32  
33 MARLENE MICHAELSON: I mean, to the extent that anyone has done an analysis to  
34 show that the slight reduction in percentage would make a difference, I'd certainly be  
35 happy to review that. I haven't seen anything like that.

36  
37 MICHAEL KNAPP: Yes.

38  
39 ROGER BERLINER: Excuse me, this was as arbitrary a number in terms of going from  
40 12.5% 5 to 10 as the 12.5% was, so it was designed to move in a certain direction. But  
41 actually, I am more interested in the conversation as to what it is the 10%, the 12.5% of



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1 and saying if we could find a way to have an agreement with respect to what that number  
2 is to start with and suppose to...

3  
4 ROYCE HANSON: Remember that when we're dealing with a market mechanism or even  
5 a pseudo market mechanism that tries to mimic the market, it is a market mechanism and  
6 therefore the price is going to fluctuate over time. Now, basically, what we have, the best  
7 evidence that we have right now is probably our recent purchase of land which had been  
8 subdivided and we bought it in fee. Remember, when you're not buying, when you're  
9 talking about BLTs, you're not talking about purchasing the fee; you're talking about  
10 purchasing an easement, the value of which is the difference between the market price  
11 and the agricultural land value. Now, agricultural land value varies from about \$5,000 to  
12 \$10,000 an acre. If you take the high end, the most expensive parcel of several that we  
13 bought was at about \$400,000. Now, if you take sort of close to the average for easy math  
14 here, if you take \$8,000 an acre as its agricultural value, that would mean that a 2500  
15 acre, I mean 25 acre parcel would be worth about \$200,000. So, if the market value of the  
16 fee is \$400,000, the value of the easement is \$200,000. So, that and that's at the high end  
17 of the current market. Now, there was a time in which the fees were going for more than  
18 that. There will be a time in which they will probably go for less than that. But looking, it's  
19 probably a pretty good number to work with at this point and it gives you a good idea if  
20 these figures are based on \$400,000, then if the cost per easement is \$200,000, the effect  
21 on the bottom line is somewhat less.

22  
23 ROGER BERLINER: Okay, and I appreciate it. And part of the conversation, I think, we  
24 just were bring into focus is to whether or not it needs to be in the beginning simply a  
25 market number, a market-driven number, or whether it could not be based originally on  
26 your market experience, okay? So, your market experience was that these were pegged  
27 to \$200,000. So, part of my thinking, and it's not fully formed thinking, I acknowledge, so  
28 that's the purpose of having this conversation, again, I'm so grateful that we're having a  
29 work session to just talk about this, is whether or not in the beginning there isn't a value in  
30 having some certainty. And whether or not if we could, for example, say that it would be  
31 capped at \$200,000 so that we know where our maximum exposure is and then we can  
32 look at that and say whether it's 10% or 12.5%, we now can do the math whereas now we  
33 can't do math because the range is too speculative. We know what the impact would be  
34 on development, at least to begin with, and then to allow for adjustments to be made as  
35 the executive deems appropriate and etcetera so that then the council can change that  
36 number over time, but to start with some level of certainties so that the commercial parties  
37 and everybody else understands what's at stake here.

38  
39 MARLENE MICHAELSON: I think because the pricing mechanism is going to be done  
40 through executive regulation and since the intent is to have it be an annual adjustment, it



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1 would be perfectly appropriate for the first year to say we want to put a cap in and see  
2 how that works.

3  
4 ROGER BERLINER: And we put that in our zone. In other words...

5  
6 MARLENE MICHAELSON: I don't think you want to put it in...

7  
8 ROGER BERLINER: We can't put the methodology in the zone so that the cap would be  
9 in the zone because...

10  
11 JEFF ZYONTZ: That cap we're putting in is that it's determined by executive regs. That's  
12 the method we're putting in.

13  
14 MARLENE MICHAELSON: And, you know, I could see a number of different ways to  
15 calculate the price and, in fact, it could be that you may get to the point of saying because  
16 we don't want this to have too great an impact on development, we're going to have a  
17 fixed number that were going to collect and we've decided the county government will  
18 make up the rest. So there's a lot of different ways to address.

19  
20 ROGER BERLINER: A lot of help for that one, I'm sure.

21  
22 MARLENE MICHAELSON: Yeah. Well, not right now but there's...

23  
24 MICHAEL KNAPP: Other instances.

25  
26 MARLENE MICHAELSON: I can see a number of different options for how you would do  
27 the pricing and I think you want to give yourself the most flexibility to adjust that every year  
28 through executive regulations.

29  
30 ROGER BERLINER: We are being asked now to make a decision with respect to BLTs in  
31 this. And your statement is you should make that decision and then...

32  
33 MARLENE MICHAELSON: In the executive regulations which must follow is where we  
34 can refine this, tweak it, we could put in caps if it makes the council feel comfortable, that  
35 would be the right place to deal with it.

36  
37 ROYCE HANSON: Now, what you want to do in the zoning text is to provide the  
38 requirement that some percentage of the increment of development over the standard  
39 method must be provided through the acquisition of BLT easements. What you have in  
40 the executive regulation then is an attempt to mimic the market in terms of establishing  
41 the price that will essentially provide both cap and floor in all likelihood for BLT purchases.



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1 Now, what the applicant has when it comes in with the development proposal to us is an  
2 option. If they can find a landowner who will sell them a BLT easement for less than the  
3 established price by the executive, God bless them. They should do that.

4  
5 ROGER BERLINER: Would that be subject the same requirements that we prioritize?

6  
7 ROYCE HANSON: Probably. Well, I don't know that it would in this case.

8  
9 MICHAEL KNAPP: All right, let's hold up. I got other councilmembers with questions, let's  
10 get to that. Councilmember Elrich?

11  
12 MARC ELRICH: I think you are just about to head into a big tangle there and I think that's  
13 something we've got to think about because we need to prioritize what we buy or we're not  
14 going to prioritize what we buy and if we do, then to let somebody buy cheaply things that  
15 are our priority that could create other problems. I would say, in general, I mean, this is  
16 sort why we're not talking about buying a BLT percent though we had a dollar figure that  
17 was attached to it and we just simply set out to raise money and it bought whatever BLTs  
18 it bought rather than trying to come up with a formula and then the money will be what the  
19 money is going to be. More generally, though, and your comments about what you might  
20 be willing to let up on and you mentioned impact fees made me extremely uncomfortable  
21 because I don't know how we pay for all this infrastructure without the fees, without...

22  
23 ROYCE HANSON: Very easily.

24  
25 MARC ELRICH: I know you're going to say some kind of development district or  
26 transportation district and that's fine, that's why I think this discussion, we've got to put all  
27 these numbers together in a package both looking at what the BLTs and any other  
28 exactions that are going to cost, that's how you're going to finance the transit package  
29 because I'm not voting for FAR 4, 3, 2, or 1 until I know how you're going to finance the  
30 infrastructure out there and you've got a plan to build it because this is a disaster waiting  
31 to happen, some of your Board members had said as much and to just, you know, give up  
32 the impact fees that the absolute certainty that there's a plan and a plan can be funded to  
33 provide the transportation. I am so not there.

34  
35 ROYCE HANSON: I'm not there either, Marc. I think if we're going to, and that's only one  
36 possible option. But I think if we're going to give up the impact tax, there has to be a  
37 special assessment that would provide for the funding. Now, what the special assessment  
38 does is it shifts the burden over time from the immediate development project to the  
39 lifetime basically of the bonds that have been issued to support the particular project. It  
40 reduces the immediate cost, spreads it out over a long period of time rather than putting it



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1 in a lump sum because it's basically supporting debt service in that framework and it  
2 makes funding the projects much more feasible.

3  
4 MARC ELRICH: Yeah, I'm supportive of that.

5  
6 ROYCE HANSON: And that's a decision to be made at the planning point, not at the point  
7 of adopting the zone. The zone really simply establishes the requirements that an  
8 applicant has to meet when they come in for development under the zone.

9  
10 MARC ELRICH: That's why it's very hard because we all know that this is about to  
11 separate the discussion of the zone neatly from the discussion of where the zone is going  
12 to be applied. And I do agree with your comments about needing to establish some kind of  
13 infrastructure tax to make sure this is paid for and given the magnitude over probably  
14 likely to ask for to be paid for, nobody has that kind of cash to throw upfront in the deal.  
15 Maybe it would be a deal breaker for everybody if you said you've got to fund your portion  
16 of the transit infrastructure today upfront and now that's not going to happen. I just think  
17 that it's critical that we have a well-thought out plan in order to make it happen, that goes  
18 along with everything else and I think would address some of the concerns, for example,  
19 that Roger has about whether this is the thing that breaks the camel's back or not. And  
20 what we'll do with parking, frankly, I hope we do with every part of the county, and I  
21 anticipate jacking down the parking requirements everywhere which means White Flint  
22 wouldn't necessarily enjoy a competitive advantage over another part of the county  
23 because no part of the county would you be required to meet our current parking  
24 requirements. So, it wouldn't be that somebody would waive the advantage of developing  
25 in White Flint versus the advantage of developing somewhere else if we get serious about  
26 doing a better job with constraining parking. So, those are sort of my levels of concern  
27 about this. The other thing and it's not on the table in this, but when we talk about equity in  
28 trying to fund the BLTs, I still wonder whether we ought to look at a county-wide fee that  
29 sits on every residential project and every commercial project. It doesn't have to be terribly  
30 large, but every time they build a house in any place you build an office building, we  
31 collect some money that goes to retiring the BLTs so that it wouldn't be, you know, we're  
32 not asking one group of developers in one place to foot the entire bill for this. I mean, if  
33 you're going to say Silver Spring and Bethesda, for example, are smart growth areas, it  
34 seems to me that they ought to be footing some of the bill for, you know, taking the  
35 density off of the ag reserve.

36  
37 ROYCE HANSON: I think what the working group contemplated was that the requirement  
38 would be placed in more than one zone. It just happens this is the zone we've got before  
39 you, this is the first...



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1 MARLENE MICHAELSON: Absolutely, and I don't in any way disagree with your  
2 suggestion. I guess my concern might be about the difficulty of implementing something  
3 like that so my recommendation would be put it in TMX zone and then if you can find  
4 something that is a county-wide fee on commercial development and get that passed, it  
5 would be very easy to have it replaced this charge on TMX. But if you don't act now with  
6 the hopes that you can succeed on that, that maybe a little bit risky.

7  
8 MARC ELRICH: But I would like, I mean, I agree. I'd like to develop some thinking about  
9 how this could be in the line of our impact fees, a fee that everybody pays toward this.  
10 And you know, with all the jurisdictions, they do the same thing with housing, they do  
11 housing impact fees and they're leveled on everybody rather than trying to exact some  
12 other...

13  
14 MARLENE MICHAELSON: And I think the working group, when it looked at the TDR  
15 programs, the TDR program is really limited to residential development and what it was  
16 suggesting was basically through other development not paying TDR fees charge a BLT  
17 cost. So, I think your suggestion is consistent with the direction they want to be going.

18  
19 MICHAEL KNAPP: Okay, Councilmember Floreen?

20  
21 NANCY FLOREEN: Thank you. I just want to return to something Jeff said this morning, I  
22 think, on the issue of the nature of the zone. He said, well, I've argued for different TMX  
23 zones. And I just want to say that we might as well, we're talking about right now White  
24 Flint and the zone. I mean, Twinbrook. You're right.

25  
26 MICHAEL KNAPP: We're glad you asked.

27  
28 NANCY FLOREEN: We're all thinking about White Flint, a plan about which we really  
29 known nothing except from what the community has told us. But this is associated with  
30 White Flint-- with Twinbrook, and I don't disagree with the issue that's been raised about  
31 how you add some certainty to the BLT cost. I said earlier and I really do believe it. If  
32 we're going to add additional density places, there should be a price and that should be  
33 associated with something that is important to us and I think that's a valid nexus. And so,  
34 I'm good with the BLT concept as it has been advanced. I am less good with discussing  
35 the White Flint plan where I don't know what the community has being told. I've got e-  
36 mails about schools and libraries and all this stuff. I don't know what the community has  
37 been told. I don't know what they, and of course, everybody leaves a meeting with a  
38 different reading of what they've heard so I'll leave that as when we take it up at a later  
39 point.

40  
41 ROYCE HANSON: Good.



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1  
2 NANCY FLOREEN: Your comments about-- well, but you folks have introduced the  
3 concept of addressing impact taxes and there's other stuff and, of course, we look forward  
4 to the conversation. But the math that Jacob did for us last June, really, which shows the  
5 pro forma for the TMX zone. Even there, you assumed a lot of things on that that may or  
6 may not come to pass. You assumed parking obligations. Now, we already changed it. I  
7 assume that was part of your development cost analysis. And you're also assuming that,  
8 you know, various amenities which, you know, there's no-- not too much enthusiasm here  
9 for one solution but that's okay. But other kinds development costs are going to remain  
10 static and I suspect that would-- maybe we'll end up with TMX too. I'm going with that if  
11 that's what we have to do in a different plan to address unique characteristics. I don't know  
12 what you're talking about with respect to the grand infrastructure plan with White Flint, but  
13 apparently, you're talking about things that can't be funded through our traditional  
14 mechanisms and so, it's something over and above APF type things, I guess, I don't know.  
15 You don't even have to tell me at this point but let's not assume anything about that.  
16 That's why we're getting a lot of correspondence from people. Primarily, developers and  
17 property owners in a plan we haven't gotten to yet that includes assumptions we don't  
18 know whether we agree with or not.

19  
20 ROYCE HANSON: Or whether will be on the plan.

21  
22 NANCY FLOREEN: Yeah. Apparently not. And that's-- and so, I just caution us all that  
23 let's just focus on what is before us, it is Twinbrook. And the-- I think the committee made  
24 pretty good tradeoffs in terms of the overall policy objectives. And as long as you leave  
25 some of the details associated with the BLT to periodic adjustment, and I do agree with  
26 the point that's been made about predictability. Remember, this is a whole new program,  
27 nobody really knows what it involves. I think that the basic policy direction is important and  
28 a really good one. But I think looking at Jacob's analysis, I just note that is on the page 53  
29 issue and earlier on, in circle 53 and circle 49, where they calculate the cost of what we  
30 put projects through now. They're not insignificant and indeed they may change over time  
31 as we revisit the growth policy, as we revisit other kinds of economic realities out there.  
32 So, all we know is that, this is a snapshot as of the moment, as of today or as of last June.  
33 Things may change, and that's all right. But I do think we can't-- I just think we have to  
34 remember that a lot of this analysis is also based on assumptions about continuing things  
35 the way they are today, and I like to think that we will continue to have grand ideas and  
36 creative solutions that may actually even be more cost-effective in the long term, or where  
37 we validate certain kinds of tradeoffs that even haven't come to us, and certainly, that's  
38 not always going to be this council's job, it's largely the Planning Board's decision to make  
39 those calls. So what's important, I think, with the legislation is that they have the tools to  
40 make them. We're not going to be able to do the math and I suspect you don't want us do  
41 the math, and it's not my baliwick anyway, so... I just want to make that comment because



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1 I do think White Flint may indeed involve a different kind of zone. I know you guys don't  
2 want to hear that, but Jeff may be right about that when we get to something with some  
3 different assumptions and some solutions, so...

4  
5 MICHAEL KNAPP: Good! All right, good discussion on BLT, so we need to look at some  
6 element of trying to introduce some certainly, I think the element that Roger has raised as  
7 it relates to where we actually make that, do you do it in the regulation, we do it here and I  
8 would just to the extent that I'm looking at a letter that Mr. Brewer sent us, talking about  
9 reductions, the extent that we can, anyone can identify some real dollars associated with  
10 the various percentages, I think that could be helpful to be able to see what various  
11 changes could do to impact a project because I think that's going to be helpful for us to  
12 get-- even if it's a hypothetical example. I know there's enough different conversation, that  
13 there's what people looking at as far as their project point and probably at least gets some  
14 sense of it, a hundred thousand dollars, is that ten million dollars, and what the impact on  
15 those projects would be. I think it would be helpful.

16  
17 JEFF ZYONTZ: All right, you just have to make assumptions on how much is residential in  
18 exempt as well, but we could certainly...

19  
20 MICHAEL KNAPP: Plus, we'll see what people have been talking about.

21  
22 JACOB SESKER: I brought some of those calculations with me. I mean, I could tell you  
23 that if you were using the same conversion ratio, 7500 square feet, and if you assumed  
24 that the BLT cost \$200,000. Then dropping it from 12.5% of the optional method density to  
25 10% of the optional method density would drop the cost per FAR foot from \$2.92, \$2.33  
26 per FAR foot. So that's a fairly substantial decline in the cost of per FAR foot. You know,  
27 similarly if you...

28  
29 MICHAEL KNAPP: If you've fallen half down to what?

30  
31 JACOB SESKER: It will go from \$2.92 down to \$2.33.

32  
33 MICHAEL KNAPP: Can you change that from going from the 9,000 square feet to 7500?

34  
35 JACOB SESKER: That was going from-- No, that was staying at 7500 and going from  
36 12.5% down to 10%.

37  
38 MICHAEL KNAPP: Down to 10%? Okay, cool.

39  
40 MARLENE MICHAELSON: Or alternatively, you could achieve the same result by in the  
41 executive regulation, capping it at less than 200,000...





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1  
2 MICHAEL KNAPP: Right, by capping it at that number...

3  
4 MARLENE MICHAELSON: And that gives you the flexibility to adjust that.

5  
6 MICHAEL KNAPP: Okay. Any modifications, I supposed I need to go back and redo it,  
7 doing as ZTA every time.

8  
9 JACOB SESKER: All right.

10  
11 MICHAEL KNAPP: All right, good. Let's try and wrap up the next three issues here  
12 although we've already did done that quite a bit a number four.

13  
14 JEFF ZYONTZ: I've did quite a bit of it, I detailed some of the parking rate reductions, it  
15 would be-- right now, parking standards are based on number of bedrooms for residential.  
16 The recommendation would be just to make it one space for every one unit and half of  
17 that for MPDUs and workforce housing units. That's the same standards that exist in  
18 Arlington County. It's somewhat of a reduction; typically, a multi-bedroom apartment is at  
19 1.25 and it could go up higher for a three-bedroom, I think. Have to remember that, but the  
20 more significant for non-residential is moving, treating the area of lower I-270 corridor just  
21 like we treat the inside of the Beltway areas. We have different standards for non-  
22 residential inside the Beltway than we do above it, that the area of-- to Twinbrook is  
23 mature enough that you're getting more, more transit availability. And the parking rates for  
24 the downtown area are more appropriate up county. That's were the rate change of 0.3  
25 per thousands square foot comes in. It would reduce in some instances from a rate  
26 requirement of 2.2 spaces per thousand square feet for non-residential to 1.9 per  
27 thousand. That's relatively substantial. The other caveat we have is, if for long term  
28 government leases, read that as more than 20 years and it's were the government doesn't  
29 own the space, we recommended 1.5 spaces per thousand for their office space.  
30 Remember, I just said it was 1.9 if you're near Metro for the other space. So this is lower  
31 than that rate. It reflects the coercive nature of government to get their employees to work  
32 from ways other than a single occupant car, and we thought that was a good idea.

33  
34 MICHAEL KNAPP: Councilmember Berliner?

35  
36 ROGER BERLINER: I want to commend the committee for this reform of our parking. I  
37 guess it's absolutely the right move and I know that Councilmember Elrich has been  
38 pushing this for some time in a more comprehensive look at our parking policy, but this is  
39 a good place to start. My question goes to the analysis that you've done with respect to  
40 the reduction in development fees that arise from this. As I heard you explain it, you  
41 explained it in terms that suggested to me that the biggest impact with respect to the



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1 reductions was felt in Germantown, that is that we made some changes to up county that  
2 were currently in place for down county or north of Twinbrook that had not been, previous  
3 to the case, that I misunderstand you?

4  
5 JEFF ZYONTZ: Yes. This, the biggest changes are in, call it south of Rockville, on I-270,  
6 where in that area you could use the down county rates. This does would not change the  
7 rates in Germantown.

8  
9 ROGER BERLINER: Would it change the rates in this section of town that we should not  
10 be discussing called White Flint?

11  
12 JEFF ZYONTZ: Yeah, it would.

13  
14 ROGER BERLINER: Okay. And what if they changed for all the categories...

15  
16 JEFF ZYONTZ: Yes.

17  
18 ROGER BERLINER: ...or just a couple of the categories?

19  
20 JEFF ZYONTZ: Yes... No, they would change it, residential and non-residential. I take one  
21 thing back; it would change the residential rates in Germantown but not the non-  
22 residential rates.

23  
24 ROGER BERLINER: Okay. So, for White Flint, for example, the reductions that you  
25 describe in terms of being two to eight times larger than the BLT cost is applicable in  
26 White Flint across the board?

27  
28 JEFF ZYONTZ: Yes.

29  
30 ROGER BERLINER: Thank you.

31  
32 JEFF ZYONTZ: And again, that was a 50% written essential project that was assuming  
33 \$200,000 for BLT. It also assumes \$40,000 per structured parking space. Is that still a  
34 good number, I hope.

35  
36 JACOB SESKER: Yes, they're increasingly shooting past that.

37  
38 MICHAEL KNAPP: Councilmember Elrich?

39  
40 MARC ELRICH: I don't want to spend a lot of time talking about it now, but I just would  
41 urge my colleagues to consider adopting the federal rate 1.5 as our overall rate. That



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1 starts pushing us down to numbers where we're going to generate some significant transit.  
2 And I think we're, you know, you're ability to constrain parking, the other side of that is that  
3 it creates transit riders and if you want a viable transit system, make sure this thing is  
4 going to function and pay for itself, you want the ridership there. And I think we really  
5 ought to seriously consider driving these numbers down, and I'm not proposing anything  
6 as radical as what they did in Boston where they said no new spaces, but...

7  
8 JEFF ZYONTZ: San Francisco...

9  
10 MARC ELRICH: I think for getting as low as we can is where we ought to-- the direction  
11 we ought to be going and...

12  
13 JEFF ZYONTZ: At some point you could have low minimum spaces and the market will  
14 produce more. At some point, to really achieve what you're talking about achieving, and  
15 you brought this up in other venues, you need to have a maximum number of spaces to  
16 achieve it, but if you put this number too low, they'll produce more to meet the needs.

17  
18 MARC ELRICH: Unless it's zoned, so that you can't produce private parking?

19  
20 JEFF ZYONTZ: Right, that would be a maximum...

21  
22 MARC ELRICH: Which I'd be more than happy also to...

23  
24 MICHAEL KNAPP: Okay.

25  
26 JEFF ZYONTZ: All right, the...

27  
28 MICHAEL KNAPP: You might actually get them in...

29  
30 JEFF ZYONTZ: The other idea, again, on cost reduction, was using the same type of  
31 mechanism that was used by this council and supported by the Planning Board in the  
32 Wheaton overlay zone which was to make the project plan optional if you are also going  
33 through the subdivision analysis. That we got testimony from the Planning Board that they  
34 object to this, but they still would want it as a separate project plan even though you  
35 submit it with a subdivision plan. Even though we heard the opposite last week when the  
36 Planning Board suggested that we should work to do away with project plans when in  
37 some instances. So the committee's recommendation was to follow the Wheaton overlay  
38 zone.

39  
40 ROYCE HANSON: The Wheaton overlay zone like proposals have never been used.  
41 There maybe a reason for that, I don't know whether there is or not.



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1  
2 MICHAEL KNAPP: Or not.

3  
4 ROYCE HANSON: But the basic problem that I outlined is in the letter here is the way the  
5 language has been drafted, you have to do everything that you would do with the project  
6 plan at subdivision in order for us to approve it.

7  
8 MICHAEL KNAPP: Yes.

9  
10 ROYCE HANSON: We have the benefit of using our staff to do that without an application  
11 fee. So, basically, what happens here, and it's understandable that the applicants like this,  
12 they pay only for the subdivision. They get the same service that they would get if they  
13 provided the project plan, and pay the application fee for the project plan. I think that you  
14 achieve the same purpose here to say that they may simultaneously submit the project  
15 plan with the subdivision plan. I think where the Board is ultimately going to come down  
16 on this is that in terms of the development process as we talked about with the committee,  
17 is, over time, there has been a migration of project plans toward site plans. That's dumb.  
18 We really shouldn't be doing that. The idea of the project plan is to give people the idea of  
19 what they can do to give us an idea of how their project is going to deal with the  
20 recommendations of the master plan for the area and then let them proceed to site plan.  
21 They can certainly do subdivision at the same time and in many cases people do  
22 subdivision and project plan together. The main thing that we're interested in is not having  
23 the project plan be a detailed site plan. Because then, you have spent a lot of money on  
24 engineering and if the Board, if it comes to the Board even after the staff has reviewed it  
25 and the staff may be happy with it, once we hear public testimony, we may not be happy  
26 with it. And as a result, we're asking the developer after having spent a million dollars or  
27 more on the site plan, what else do you have to offer? We think it makes a lot more sense  
28 to have the project plan come in and begin to set the general parameters for the site plan  
29 without having expended an enormous amount of money up to that stage. It gives them  
30 some direction and some guidance. The site plan must conform to the project plan and we  
31 think that makes a lot more sense.

32  
33 MICHAEL KNAPP: Mr. Elrich?

34  
35 MARC ELRICH: What's that do to time? I mean, the essence of this is to try to deal with  
36 time and the idea that time is money. So, if you save a million dollars but it stretches out  
37 the time and the time cost...

38  
39 ROYCE HANSON: Well, there's a particular prevailing... I think it will-- I think, basically,  
40 the idea is for the project plan to save time and money. We have a requirement and we  
41 have met it unless the applicant has asked for additional time. We have to respond to a



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1 project plan within 90 days. The-- if it comes in as a subdivision plan, we are not so  
2 restricted. So from a time perspective, it's, I think, to the applicants advantage to use the  
3 project plan process, get guidance on what they have to do to meet the requirements of  
4 the master plan or sector plan and then proceed to spend their money doing the detailed  
5 engineering and design work, and the architectural work in greater detail that needs to be  
6 done to get a site plan.

7  
8 JEFF ZYONTZ: I didn't memorize the subdivision ordinance, but I think there's like a 60-  
9 day requirement after a completed plan. But there's lots of things that stop the clock, if you  
10 will, when the developers...

11  
12 ROYCE HANSON: Right.

13  
14 JEFF ZYONTZ: ...is asked to do things and change things. But I think there is a time limit  
15 in subdivisions, but I couldn't find that out. Anyhow, that will be your issue, you know...

16  
17 MICHAEL KNAPP: I think that's...

18  
19 MARC ELRICH: Because they run these two things together, I mean it doesn't sound  
20 like...

21  
22 JEFF ZYONTZ: If they can and then they could do that today...They didn't know.

23  
24 MARC ELRICH: And if I submit... I guess I'm having a hard time understanding why this  
25 is so important to change. If you can do them both and the result of input is that you  
26 change the project plan, doesn't that mean that with everything you've done on the  
27 subdivision, it has to be inked up.

28  
29 ROYCE HANSON: Not necessarily. Subdivision is basically that, the meets and bounds, it  
30 may or may not even include a building location.

31  
32 JEFF ZYONTZ: Right and much of subdivision is the configuration of the lots, the  
33 entrances and the exits to the road way system...

34  
35 MARC ELRICH: So you guys are saying that...

36  
37 JEFF ZYONTZ: ...and the easements...

38  
39 MARC ELRICH: We have two developers in the back of the room who are shaking their  
40 head and say the opposite of what you're saying, so I'm confused. I mean, they seemed to  
41 think that it could result in pulling the whole thing and changing it. And you're saying



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1 there's nothing on there that should have to be pulled unless you decide to change with  
2 the lot lines and the entrances?

3  
4 JEFF ZYONTZ: Again, it also speaks to the total amount of development on that for the  
5 APF test. So if you change that, I doubt whether the Planning Board would change it  
6 upward from what they said. But certainly, that has an effect budget-wise.

7  
8 ROYCE HANSON: No, it can't change it upward...

9  
10 MARLENE MICHAELSON: I think the issue here is that as long as the project plan is  
11 more burdensome than developers think it need be. In other words, if it's more like site  
12 plan or if it's a process...

13  
14 ROYCE HANSON: More outside help...

15  
16 MARLENE MICHAELSON: ...by which the Planning Board is extracting a lot from them,  
17 that they think is beyond what's called for in the law, then they will opt for this process that  
18 allows them to do the combined one, the combined subdivision project plan to the extent  
19 that the Planning Board continues to refine the project plan process and make it what,  
20 back to what it was truly intended to be, then it's going to be helpful for a developer to go  
21 in and get that original sign off. So, in my mind, having this option actually is an incentive  
22 for reform of the process, and so...

23  
24 MARC ELRICH: What's to keep the Planning Board from exacting everything that's  
25 exactly out of a project plan anyway?

26  
27 ROYCE HANSON: We would have to...

28  
29 MARLENE MICHAELSON: Well...

30  
31 ROYCE HANSON: We would have to make the stuff to make all the findings...

32 MARLENE MICHAELSON: They have to make all the findings but, again, to the extent  
33 that in the mind of some property owners, they'd been going beyond that and taking the  
34 project plan step too far, this helps to pull back on that.

35  
36 ROYCE HANSON: I think, and I-- I think the criticism is well-made. I think we have taken  
37 the project plan too far. I think our staff thinks we've taken the project plan too far, and  
38 they would like to see the project plan go back to what the original intent...

39  
40 MARLENE MICHAELSON: Uh-huh.



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1 ROYCE HANSON: ...of the project plan process was.

2  
3 MARC ELRICH: Isn't that something you can do without any...

4  
5 ROYCE HANSON: Yes, it is something that we can do, but all the point that I'm trying to  
6 make here is when you're dealing with the zoning ordinance, you have to look at the  
7 language that is here. The language that's here basically says if the applicant chooses not  
8 to present, submit a project plan, the Planning Board must find that the proposed  
9 subdivision will meet the requirements that you have to meet when you present a project  
10 plan. You know, how in heaven's name are we supposed to do that if we don't have all of  
11 the elements of the project plan there? Because it says we have to meet the findings  
12 under 49D2.42 and .43. Those are the findings we have to make for a project plan, to  
13 make the findings for project plan, you have to have either a project plan or a facsimile  
14 thereof.

15  
16 MICHAEL KNAPP: The issue is raised.

17  
18 MARC ELRICH: Okay.

19  
20 ROYCE HANSON: And before we're going to do that review...

21  
22 MICHAEL KNAPP: Got it.

23  
24 ROYCE HANSON: ...I think we ought to get the fee for it because we've had a problem  
25 with the special revenue fund, folks, remember.

26  
27 MICHAEL KNAPP: If we deal with that, we heard that last week. All right, thank you.

28  
29 JEFF ZYONTZ: Let's go to a nice easy one where we...

30  
31 MICHAEL KNAPP: You still have to comment on this?

32 MARC ELRICH: Nope.

33  
34 MICHAEL KNAPP: Councilmember Floreen would like to weigh in.

35  
36 NANCY FLOREEN: All right, from the community's perspective, it's a remarkably  
37 confusing process in terms of who has to do what at what point. And I submit to you, I  
38 think it's to everyone's advantage to have a property project that's actually ready to go,  
39 going. So that you have the engagement, you resolve the details and it's hard, and it's  
40 detailed, but at least you have people who are closer in time to actually delivering it and  
41 sorting out the details and doing the math and making sure that the performers work than



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1 a more academic phase. I think the committee recommendation is just one of the tools  
2 that would achieve that, and I would submit that perhaps whenever we do rewrite the  
3 zoning ordinance, when the key elements is going to be eliminating steps were they--  
4 there's at least the opportunity for consolidation in a time-efficient manner. This is not a  
5 revenue-generating objective. This is an opportunity to get all the people in the right place  
6 at the right time to focus on the relevant details and to make a decision. And if this doesn't  
7 work, you know, people will be discouraged from doing it for that reason because it won't  
8 be cost-effective for them, and things will get delayed. But if there's an opportunity for  
9 certainty and predictability, I think we should go for it. And that's why it's an option.

10  
11 ROYCE HANSON: Right. I think you could achieve that with just the first sentence of that  
12 paragraph.

13  
14 MICHAEL KNAPP: Okay, we'll work through the language piece. Okay.

15  
16 JEFF ZYONTZ: Okay, now we want to be certain about the uses that are permitted within  
17 the zone, and in committee and in discussions, what we decided was to allow all the uses  
18 that are allowable in the TOMX zones that exist and the CBD zones. The most  
19 controversial land use that's added to the list from what was in the draft, as introduced,  
20 was automobile sales indoor and outdoor. And after some discussions and the protections  
21 of the project plan, the preliminary plan and the site plan, the Planning Board concluded  
22 that they could have enough design-- oh, and the design guidelines that they would have  
23 to file. And then master plan recommendations on the design, they thought they have  
24 enough controls to establish the land use. And again, at some point, what we're going to  
25 need to do on the rewrite of course is collapse these myriad of uses that really have no  
26 effect on the outside world except to confound people. The fact in some zones that you  
27 can be a forest in one, but not a newsstand is just crazy but... Next question...

28  
29 MICHAEL KNAPP: Okay, I don't see any question on this topic.

30  
31 JEFF ZYONTZ: Okay.

32 MICHAEL KNAPP: Although my staff just sent me a message saying that since there  
33 appears to be no direct correlation between what the dollar does it anything else in the  
34 real world, and the longer we've spoken today, the dollar is up 900 points, so they...

35  
36 NANCY FLOREEN: Okay!

37  
38 MICHAEL KNAPP: So They like us to, at least, continue to talk until 4:30. So, we can  
39 keep that and...

40  
41 ROGER BERLINER: Holy mackerel!





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1  
2 MICHAEL KNAPP: We can keep doing exactly that. If we can keep doing that, so we got  
3 about 16 minutes left, so...

4  
5 JEFF ZYONTZ: Exactly, the world it seems.

6  
7 JEFF ZYONTZ: So, okay.

8  
9 MICHAEL KNAPP: All right, number six.

10  
11 JEFF ZYONTZ: Speaking of things I don't understand, we talked about the grandfathering  
12 provisions, it was a little more strict as introduced, as recommended by the committee, it  
13 would allow all things that have a plan development in the plan development zones or the  
14 TSR and TSN zones to...

15  
16 MICHAEL KNAPP: Okay, that's fine.

17  
18 JEFF ZYONTZ: ...to retain they're approvals and go forward under that, those approvals.  
19 That's very different than many of the grandfathering provisions that really deal with things  
20 onsite. The other things it would also grandfather, all approved preliminary plans. Now,  
21 what it does not include is the potential zoning envelop of existing zones. And do you did  
22 get some testimony on that that said, gee, under some things in C2 today, I can get a one  
23 point FAR, you should grandfather my ability to get the 1.5 FAR under my older zone.  
24 That would be in extraordinary grandfathering and would almost obviate the reason to  
25 rezone at all. So, the recommendations of the committee were broader than as  
26 introduced, but not near as broad as what you'll have in testimony.

27  
28 MICHAEL KNAPP: Okay. And I see no comments, I see no comments on this. Okay, that  
29 gets us through the TMX zone. There have been a few issues that have been raised from  
30 Ms. Floreen's proposal to Mr. Berliner's. We've got some information back, and so we can  
31 work through that. And so, now, we have before us the I-4 Transit Station Development  
32 area.

33  
34 JEFF ZYONTZ: The I-4 Zone has some amendments that make its applicability for transit  
35 station development areas and has special standards for those areas, in particular, it  
36 allows for residential units as a portion of the upper story of sort of industrial properties.  
37 And again, it's to allow for some mixed use. It also has a provision that if you use the  
38 special provisions, then you're subject to site plan within the I-4, which also helps with the  
39 design principles of getting people to the Metro. It is relatively simple as compared to the  
40 changes being offered for the others, for the TMX zone. So, I don't know if there's any  
41 topic you wish to go into.



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1  
2 MICHAEL KNAPP: Oh, Councilmember Berliner...

3  
4 ROGER BERLINER: I confess I have not focused one brain cell on this issue. Is there an  
5 issue? Does the committee, is there any controversy with respect to this item that any of  
6 us are aware of?

7  
8 JEFF ZYONTZ: I'm certainly not aware of any kind...

9  
10 ROGER BERLINER: That's why I've saved my braincells, okay.

11  
12 MICHAEL KNAPP: For the benefit of all of this, we appreciate that.

13  
14 NANCY FLOREEN: Wow, that's a good use of brain cells.

15  
16 MICHAEL KNAPP: It was. Good selection. Okay, it is now 4:15, that concludes the ZTA.  
17 So, what I'd like to do is to at least walk through the overview of the master plans when we  
18 get those issues on the table. Can we start with transportation first?

19  
20 MARLENE MICHAELSON: Yeah, I don't know if you wanted the Planning Department  
21 staff to give a brief overview of the plan because I don't think the whole council has heard  
22 that.

23  
24 MICHAEL KNAPP: Yeah, I think it would be worthwhile although the whole council, the  
25 whole council still won't hear it.

26  
27 MARLENE MICHAELSON: Right or hear as many as we can.

28  
29 MICHAEL KNAPP: But at least the majority of the council was here. This is the Twinbrook  
30 sector plan.

31 JOHN CARTER: This is the actual Twinbrook sector plan, we're finally there. Not the other  
32 ones...

33  
34 ROGER BERLINER: It's still not being named.

35  
36 ROYCE HANSON: This is one you can actually vote on.

37  
38 MICHAEL KNAPP: Okay.

39  
40 JOHN CARTER: I think the staff reports you have lays out the issues that we went  
41 through and I think we did a pretty good job on those, but I don't-- I'm not sure I can



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1 replicate the first speaker and the energy that that first speaker brought, but I'm going try.  
2 So, one, Twinbrook is a special place, it's one of the unique places in the whole corridor.  
3 What makes it unique, it's three stops from NIH and you'll see why that's important in a  
4 second. It is a metro station and we don't have a lot of those. It is a little underutilized for  
5 those who have been out there, somewhat of an understatement. So what we've done is  
6 divide it into three areas, you have what we call the metro core area. This is all the area  
7 west of Twinbrook Parkway. This is 355, here, the tracks, the Twinbrook Parkway, the  
8 cemetery is on the east, you have garden apartments on the north, you have existing  
9 Rockville single family detached neighborhood here. You have Montrose Parkway down  
10 here, some multi-family over here and the famous Rockville Pike over on this side. So,  
11 what you see, that this area was annexed after the last master plan, we have a wonderful  
12 tradition here, we do the planning, Rockville does the annexing and this is what occurred  
13 there as part of that.

14  
15 ROGER BERLINER: We charged them for that, right?

16  
17 JOHN CARTER: Well, we try to but I'm not sure we get... But they're going to add on tax  
18 so it's okay, I think. So, that's the core area. That's a residential area primarily, it has retail  
19 that serves this area, grocery stores, those kinds of things, and the zoning pattern  
20 promotes that. Next down, which is critical and this is why the NIH proximity is important.  
21 This is what we call the technology employment area. In that, you have several industries  
22 beginning to start. You have US pharmacopoeia which actually measures in ways the  
23 human genome from a private sector side; they're all over the world. This is their national  
24 headquarters here, they have a little conference center, they have their offices and they  
25 do a little bit of lab work. What's beginning to happen is some of NIH subsidiaries or  
26 consultants, or even NIH itself is going in this area a little bit. This is what we call Fisher's  
27 Place; this is a recently constructed project here. Anyway, these are usually a mixture of  
28 office, a little bit of retail and perhaps some lab spaces in there. The third component is  
29 the light industrial area down here, which is critical as part of the discussion with the  
30 PHED Committee, we have maps that show where light industrial is in the county, it's been  
31 a forgotten land use approach in the county. We've mostly reduced the amount and it's  
32 critical to keep what we have, we are below what the surrounding counties are-- I forgot  
33 the numbers, it's something like 5% of the land, and you better not hold me to that. It's a  
34 very small percentage, almost nothing south of Rockville in terms of the light industrial.  
35 Why is that important? It's part of the dynamic. The housing, the employment, a special  
36 kind of employment with the light industrial, both of them kind of worked off of that. This  
37 you'll buy test tubes, here's where you store your back of house things, this is also a  
38 supplier for the middle of the county. This is where the plumbers go, this is where you get  
39 your furniture repaired. This is where you get your lawn furniture repaired. It's that dynamic  
40 ...  
41



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1 NANCY FLOREEN: Buy your sheet music?

2  
3 JOHN CARTER: What's that?

4  
5 NANCY FLOREEN: Buy your sheet music?

6  
7 JOHN CARTER: Sheet music, those kinds. So that's the dynamic that makes Twinbrook  
8 very special. And I hope you sort of have seen some passion on my part because this is  
9 really, it really is special. Now, how are we putting this together, the TMX? This is the way  
10 it use to be. And if you looked, the Twinbrook is kind of a microcosm of what you would  
11 see if I had the whole I-270 corridor. What used to happen is we kind of go around and  
12 zone parcels separately. We've got to see all; that was the US pharmacopoeia because  
13 those uses are not allowed in the I-1 zone. Then we have the R-200 Zone, I don't know  
14 why that's there, but that's really strange to have R-200 sitting in there. We have a little R-  
15 90 next to the metro station. We have a little OM. Now, in the OM zone, you can only have  
16 an office, you can have a retail but it has to be off the lobby, it can't be from the outsides.  
17 So there's a lot of what seems at this point silliness, I'll call, it in that kind of zoning. What  
18 you're seeing is a very simplified approach to this, to the zoning relying on the master plan  
19 to provide the specificity. So, in the metro core area, it is a mixed use area, it promotes  
20 housing as you work through that in the PHED committee, it has a percentage of housing  
21 25% must be attained at all times. In terms of the height, it's to match what we did in the  
22 city of Rockville. I believe ten to twelve stories with 143 feet as the height limit that we  
23 added. Now, when you come over here, it's less onerous in terms of housing. This areas,  
24 the 2.0 FAR, this is the 1.5 FAR. That replicates what you see here, what has been  
25 developing in the I-1 Zone and here. On top of this, it use to be a floating zone, you see  
26 this TSM in 32 years, there's not one application for the TSM. That was put on there to get  
27 a little bit of housing, 410 units; we never got one unit out of that TSM. That's why this is--  
28 it's critical, this approach will work much better. And then down here in the light industrial  
29 area, we're sticking to the I-4 and I know we don't want to use anymore brain cells on this,  
30 but this is an urban, the small changes will make some urban I-4 Zone. It's not I-4 as you  
31 might perceive it in the air park, this is a close to the metro although this is roughly half a  
32 mile away. It allows just a little bit of housing, it reduces the lot size more appropriate to  
33 what a transit station area is and that's Twinbrook.

34  
35 MICHAEL KNAPP: Okay.

36  
37 NANCY FLOREEN: Okay.

38  
39 MICHAEL KNAPP: We will take two minutes and do transportation... Well, no, I will  
40 apologize because, you know, five-- three of the five were here, and actually, Donald is in  
41 the committee and now I have two left, and so I'm assuming that the four who aren't here



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1 are going to have questions on whatever else on the map and the sector plan. So like  
2 rather than redo it all again, I would just make sure we do it for the benefit of everyone at  
3 one time. So we can do the transportation piece then we'll come back and get the rest.

4  
5 GLENN ORLIN: Thank you. We can do this in two minutes. Only three issues; there was  
6 unanimous opinion in the PHED Committee about this. The first issue is a road called B-  
7 14, which is a business district street that runs behind FDA from Wilkins Avenue up to  
8 Fishers Lane. The concern here raised by the folks who essentially owned the Parklawn  
9 building was that they needed to have the road be as far away as possible from the  
10 building for a-- not for providing parking and for a blast area, frankly, as well. And so the--  
11 we found was that for this street, which is, in the plan, had 70 feet in terms of width, in  
12 terms of right of way, we really don't need a right of way nearly that wide. We don't need  
13 the right of way nearly that wide because we don't need, we only need is to travel lanes.  
14 We do not need two parking lanes, there's no retail along here. We don't need a sidewalk  
15 or landscaping on the east side because there's a cemetery on east side, there's nobody  
16 walking there. As, when Kreiger said, dead man walking, that's about it. So, 45 feet was  
17 all that was considered necessary here, what the committee's recommendation was, was  
18 to reduce the right of way from 70 to 60 feet because that's more of a standard width for a  
19 two-lane road. But that if, put a note in the master plan which says that if the Parklawn  
20 building or any other Federal tenant required a narrow right of way, they could go down as  
21 low as 45 feet. That's the first issue. The second issue had to do with the continuation of  
22 something called B-16, business districts street 16 from Fishers Lane up to Twinbrook  
23 Parkway at Halpine Road. The agreement here on the committee was that there should  
24 be a 60-foot wide right of way as per the master plan, but just because there's a line that  
25 connects the two points; it doesn't mean it's a straight line. It could be a curved line, it  
26 could actually be even a line were you come up and you actually make a left turn to go as  
27 long as this is a continuous way of getting from Fishers Lane out to Twinbrook Parkway, at  
28 Halpine Road, that's all that's necessary. The only other point that was made by the  
29 committee, by staff in the committee was that the eastern end of Halpine Road, as it  
30 comes into Twinbrook Parkway, it should be realigned so that it matches up directly to this  
31 road, be one traffic signal rather than two. And the last issue has to do with a proposed  
32 hiker/biker trail and pedestrian connection between the end of Washington Avenue and  
33 Nebel Street, the current plan has no bike way connections across the railroad tracks. The  
34 plan calls for upgrading a sidewalk to a bike path along the east side of Twinbrook  
35 Parkway, it also calls for the Montrose Parkway which already has, anyway, in the master  
36 plan a hiker/biker trail in the north side here, but another third pedestrian crossing here, a  
37 bike crossing. The problem with this crossing is the grades don't work. This is several-- it's  
38 like ten or twenty feet or so below the grade of the railroad tracks. You'd have to actually  
39 physically have a bridge going up and over and high enough over the railroad tracks so it  
40 clears the CSX's requirements, I think it's 22 feet, which is higher than normal and back  
41 down to Nebel Street and DOTS may set a 900-foot long bridge, very, very expensive for



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1 something which is very likely not be used very much, particularly, if you have to go up  
2 900 feet up and down. It would be better if we could actually go underneath because the  
3 grades work for that except for this is were the metro tunnel actually comes up to grade  
4 and see one of the piece and underneath to be a sub main to a metro tunnel. So, the  
5 Recommendation of the Committee is to take this off the plan but include language here, it  
6 doesn't preclude that in the future we should look for other possibilities for crossings, but it  
7 would be in a new plan. That's it.

8  
9 JOHN CARTER: And all of those things put together, makes the land use and the  
10 transportation balance. There's a grid system that goes on top of that, it's behind one of  
11 those boards, I won't pull it out unless you really want. That the issue there are the two  
12 intersections of Fisher's Place and Twinbrook Parkway, and Parklawn Drive and  
13 Twinbrook Parkway. So the grid system allows you to avoid those a little bit better, and so  
14 we can get across those into the metro station from the employment corridor through the  
15 housing area, to the metro station. But this, yeah, there's the road system. But the roads  
16 and the land use are in balance and...

17  
18 MICHAEL KNAPP: All right, there will be a real-- there will be a [INDISTINCT] Okay.  
19 Questions on transportation, on the overview? I don't see any. Okay. Thank you all very  
20 much. I appreciate it. Yes, the Dow appreciates it. appreciates it; we've made it with  
21 through the extra work, I think we're there. The council is-- but we'll-- is not meeting next  
22 week, Election Day, nor the following week, which is Veterans Day, and so the council will  
23 reconvene on November 18th and we will have two pretty busy sessions before we get to  
24 Thanksgiving, on the 18th and the 25th, so thank everyone for their efforts and would  
25 encourage councilmembers, if they have questions or additional information or inquiries  
26 on the TMX zones pursuant to our conversations today, we actually have a period of time  
27 now to really make sure we get those flushed out if you people have an ideas, concepts  
28 put on the table, now is the time to do it so when we come back, we can actually address  
29 those issues so we don't have another work session actually turn into a voting sessions.

30  
31 ROGER BERLINER: And thank you again Council President for this work session. I think  
32 it was very productive.

33  
34 MICHAEL KNAPP: Good. The council is in recess.  
35